

✓ #55817  
\$1,050.00  
7/3/19



# Certificate of Public Convenience and Necessity Application

Sussex County

Mitchell Farm





July 3, 2019

Ms. Donna Nickerson  
Public Service Commission  
861 Silver Lake Blvd.  
Suite 100  
Dover, DE 19904

Re: CPCN Application-Mitchell Farm

Dear Ms. Nickerson;

Enclosed you will find the CPCN application for the Mitchell Farm project in Sussex County, Delaware.

One original copy the application has been included. If I can be of further assistance upon your review, please do not hesitate to contact me at 302-645-6228.

Respectfully,

A handwritten signature in blue ink, which appears to read "Darrin Gordon".

Darrin Gordon  
General Manager

cc: Ms. Christine Galaska, SFMO w/enclosures  
Mr. Ashley Kunder, DPH w/enclosures  
Mr. Steven Smailer, DNREC w/enclosures  
Mr. John Ashman, SC Dept. of Planning w/enclosures

APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
REQUIRED TO BEGIN OR EXPAND THE BUSINESS  
OF A PUBLIC WATER UTILITY

BEFORE THE PUBLIC SERVICE COMMISSION

Application Fee               \$300 for filing each extension to a CPCN  
                                     \$750 for filing each original application for new water utility 26 Del. C. §114(a)

This form of application must be filed for each new and expanding water system pursuant to 26 Del. C. §203C.

WATER UTILITIES:

1. Basis for application:

- \_\_\_\_\_ a.       Water in the proposed service area does not meet the Regulations Governing Public Drinking Water Systems of the State Board of Health for human consumption; {26 Del. C., §203C (d)(2)(a)}; or
- \_\_\_\_\_ b.       Water supply in the proposed service area is insufficient to meet the projected demand; 26 Del. C., §203C (d)(2)(b)}; or
- \_\_\_\_\_ c.       The applicant is in possession of a signed service agreement with the developer of a proposed subdivision or development, which subdivision or development has been duly approved by the respective county government; {26 Del. C., §203C (e)(1)(a)}; or
- XXX d.       The applicant is in possession of a petition signed by all of the parcel owners of the proposed territory to be served; {26 Del. C., §203C (e)(1)(b)}; or Exhibit A
- \_\_\_\_\_ e.       The applicant is in possession of a duly certified copy of a resolution from the governing body of a county or municipality requesting the applicant to provide service to the proposed territory to be served; {26 Del. C., §203C (e)(1)(c)}.

2. To obtain a Certificate of Public Convenience and Necessity ("CPCN") to provide adequate water service to customers and meet the Regulations Governing Drinking Water Standards of the State Board of Health for human consumption {26 Del. C., §203C(a)}.

3. The Board of Public Works of the City of Lewes requests an informal fact-finding procedure during review of application.

- 4.           (a.)   Full legal name and address of Applicant:  
                      Board of Public Works of the City of Lewes
- (b.)   Full name of the Utility's designated representative:  
                      Darrin Gordon
- (c.)   Phone no: 302-645-6228
- (d.)   Fax no: 302-645-6358
- (e.)   Email address: dgordon@lewesbpw.com

5. Supporting documentation required by 26 Del. C. §203C(e)(1), including evidence that all landowners of the proposed territory have been notified of application: **Exhibit B**

In connection with such notification, the BPW hereby requests a waiver of the timing requirement prescribed by 26 Del.Admin.C. Section 2002-9.2, which requires that the notice

“shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the application.” The BPW believes that the PSC has good cause to grant such a waiver, because (i) granting the requested waiver would be in the public interest because the timing requirement is an administrative rather than a statutory requirement; (ii) the BPW had provided all necessary information about the parcels; (iii) the BPW believes that granting the waiver should not be unduly disruptive for customers and would provide for an administratively efficient use of resources; and (iv) the BPW believes that extending water service to the parcels listed in the Application would not harm or degrade its ability to provide safe, reliable water service for its present customers. Both landowners signed petitions requesting the granting of the CPCN to the BPW, and both landowners continue to desire the BPW to provide the requested service.

6. A complete list of county tax map parcel number(s) for the area covered by the application: **Exhibit C**

7. A complete list of county tax map parcel number(s) with corresponding names and addresses of property owners and a copy of the tax map(s) for the area: **Exhibit C**
8. The Applicant hereby certifies that the extension will satisfy the provisions of 26 Del. C. §403, including:
  - (a.) The Applicant is currently furnishing water to its present customers in Delaware in such a fashion that water pressure at every house supplies is at least 25 psi at all times at the service connection.
  - (b.) The Applicant shall furnish water to the house or separate location of each new customer in the Delaware at a pressure of at least 25 psi at each location or house at all times at the connection while continuing also to supply each old customer at a pressure of at least 25 psi at each house at all times at the service connection.
  - (c.) The Applicant is currently not subject to a finding by the appropriate federal or state regulatory authority that we have materially failed to comply with applicable safe drinking water or water quality standards; and
  - (d.) The Applicant is currently not subject to any Order issued by the Commission finding that The Board of Public Works of the City of Lewes has materially failed to provide adequate or proper safe water services to existing customers.
9. Copies of petitions signed by landowners showing all the parcel owners of the proposed territory to be served agree with the filing of a CPCN to permit Applicant to provide them with public water, and evidence, as required by 26 Del. Admin. C. § 2002-8.4, of the authority of each signatory for each landowner to sign the applicable petition.  
**Exhibit A**
10. Plan of service:
  - (a.) The application includes two (2) parcels, located at the intersection of Kings Highway and Gills Neck Road in Lewes & Rehoboth Hundred, Sussex County, Delaware and identified by County Tax Parcel Numbers: 3-35-8.00-37.00 and 3-35-8.00-37.00.
  - (b.) These (2) parcels will be served by an existing 12 inch main that is located on Kings Highway, via improvements, including a new 8 inch main, to be constructed by Mitchell Family, LLC on County Tax Parcel Number 3-35-8.00-37.00, which will serve both tax parcels. BPW anticipates water service will be available upon receipt of approval via the existing 12 inch main adjacent to the proposed territory.
  - (c.) A map showing the location of the parcels is provided in **Exhibit C**.
11. (a.) A copy of the application must be sent to State Fire Marshal, Public Health Department, Department of Natural Resources and County Engineering/Utility.
  - 1.) The current status of such application is: **Sent**
  - (b.) The Applicant provides the following additional information with this application;
    - 1.) A corporate history including BPW charter. **On PSC File**
    - 2.) A map identifying all areas, including all towns, cities, counties, and other governmental subdivisions to which service is already provided, **On PSC File**



3.) Any additional information required by PSC Staff will be made available on request.

Respectfully submitted,

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Darrin Gordon  
General Manager

## **Certification of Landowner Information Accuracy**

By submitting this application, The Board of Public Works of the City of Lewes hereby certifies that we have reviewed the appropriate tax or land record documents; and that according to those documents, the landowners identified in the parcel lists are the landowners of record and that the petitions contained in this application have been signed by the landowners of record.

---

Darrin Gordon  
General Manager

# Exhibit A

**Petition Form**

I/We, the undersigned, request to be included in the water service territory of the City of Lewes Board of Public Works, for the following property/properties:

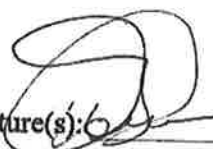

Tax Parcel Number(s): 335-8.00-37.01

Property Owner(s): Cape Henlopen Medical Center, LLC

Mailing Address: ~~c/o Baird Mandalas & Brockstedt, LLC~~  
859 GOLF LINKS LN ~~Attn: John W. Paradee, Esq.~~  
MAGNOLIA DE 19962 ~~1413 Savannah Road, Suite 1~~  
~~Lewes, DE 19958~~

Property Address: 3+/- acres (separate address not assigned yet)

Farmhouse Address:  
1019 Kings Highway  
Lewes, DE 19958

Owner's Signature(s):  

Date: 3/29/19

Print Name: Megan M. Glick / David Blaeuer Title: Managing Members

Address: 859 Golf Links Lane, Suite 1  
Magnolia, DE 19962 Phone #: (302) 677-1965

ALL LEGAL OWNERS OF THE PARCEL MUST SIGN FOR THE PETITION TO BE VALID. FOR PARCELS OWNED BY INDIVIDUALS SIMPLY INDICATE OWNER AS TITLE. FOR PARCELS OWNED BY CORPORATIONS, LLC'S, OR OTHER ENTITIES, PLEASE PROVIDE DOCUMENTATION OF SIGNER'S AUTHORIZATION. I UNDERSTAND THAT BY SIGNING THIS PETITION MY PROPERTY MAY HAVE TO REMAIN IN THE LEWES BOARD OF PUBLIC WORKS SERVICE TERRITORY PERMANENTLY. I ALSO UNDERSTAND THAT IT MAY AFFECT MY ABILITY TO OBTAIN A PERMIT FOR A NEW WELL. IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).

**Petition Form**

I/We, the undersigned, request to be included in the water service territory of the City of Lewes Board of Public Works, for the following property/properties:

Tax Parcel Number(s): 335-8.00-37.00

Property Owner(s): Mitchell Family, LLC

Mailing Address: c/o Morris James, LLP  
Attn: David C. Hutt, Esq.  
107 West Market Street  
Georgetown, DE 19947

Property Address: 50+/- acres  
Farmhouse Address:  
1019 Kings Highway  
Lewes, DE 19958

Owner's Signature(s):



Date:

3-18-19

Print Name: Robert P. Mitchell

Title: Manager

Address: 20773 Atlanta Road  
Seaford, DE 19973

Phone #: (302) 448-6430

**ALL LEGAL OWNERS OF THE PARCEL MUST SIGN FOR THE PETITION TO BE VALID. FOR PARCELS OWNED BY INDIVIDUALS SIMPLY INDICATE OWNER AS TITLE. FOR PARCELS OWNED BY CORPORATIONS, LLC'S, OR OTHER ENTITIES, PLEASE PROVIDE DOCUMENTATION OF SIGNER'S AUTHORIZATION.**

**I UNDERSTAND THAT BY SIGNING THIS PETITION MY PROPERTY MAY HAVE TO REMAIN IN THE LEWES BOARD OF PUBLIC WORKS SERVICE TERRITORY PERMANENTLY. I ALSO UNDERSTAND THAT IT MAY AFFECT MY ABILITY TO OBTAIN A PERMIT FOR A NEW WELL. IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).**

# Exhibit B

00039258.DOCX.



March 29, 2019

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Cape Henlopen Medical Center, LLC  
Attn: Ms. Megan M. Glick and Mr. David Blaeuer  
859 Golf Links Lane  
Magnolia, DE 19962

**RE: Certificate of Public Convenience and Necessity ("CPCN") Application for Water Service**

Dear Ms. Glick and Mr. Blaeuer:

As you are aware, the City of Lewes Board of Public Works ("Lewes BPW") is in the process of updating our CPCN area to include your property located on Kings Highway. This will allow the Lewes BPW to provide water service to the Tax ID number listed below:

335-8.00-37.01 – 3.00 Acres

The Lewes BPW will be submitting an application for a CPCN with the Public Service Commission ("PSC") within the next 35 days. Included with this letter is information that we are required to provide to all landowners within a proposed service territory prior to filing the application for a CPCN. When the CPCN is granted, the Lewes BPW will have permission to provide public water service to your parcels.

If you have any questions, do not hesitate to contact my office.

Very truly yours,

Darin E. Gordon  
General Manager



**YOU SHOULD READ THIS NOTICE CAREFULLY.**

Public records list you as a landowner of the property with the following tax map parcel identification number(s): 335-8.00-37.01. Within thirty-five (35) days, the City of Lewes Board of Public Works plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as Mitchell Farm.

**THE CITY OF LEWES BOARD OF PUBLIC WORKS HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. THE CITY OF LEWES BOARD OF PUBLIC WORKS ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO MITCHELL FARM UPON COMPLETION AND AWARDED OF THE CERTIFICATE, AS WATER IS ACCESSIBLE AT THE PROPERTY LINE.**

**IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.**

- 1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, you do not have to take any action.
- 2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in the proposed service territory might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "optout" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees.
- 3) You may object to the Public Service Commission granting a Certificate *for the proposed service territory*. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission



why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to opt-out, it is requested that you complete the form and return it to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

If you want to "opt-out" or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to "opt-out" or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).



March 29, 2019

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mitchell Family, LLC  
c/o Morris James, LLP  
Attn: David C. Hutt, Esq.  
107 West Market Street  
Georgetown, DE 19947

**RE: Certificate of Public Convenience and Necessity ("CPCN") Application for Water Service**

Dear Mr. Hutt:

As you are aware, the City of Lewes Board of Public Works ("Lewes BPW") is in the process of updating our CPCN area to include your property located on Kings Highway. This will allow the Lewes BPW to provide water service to the Tax ID number listed below:

335-8.00-37.00 – 49.53 Acres

The Lewes BPW will be submitting an application for a CPCN with the Public Service Commission ("PSC") within the next 35 days. Included with this letter is information that we are required to provide to all landowners within a proposed service territory prior to filing the application for a CPCN. When the CPCN is granted, the Lewes BPW will have permission to provide public water service to your parcels.

If you have any questions, do not hesitate to contact my office.

Very truly yours,

Darrin E. Gordon  
General Manager



**YOU SHOULD READ THIS NOTICE CAREFULLY.**

Public records list you as a landowner of the property with the following tax map parcel identification number(s): 335-8.00-37.00. Within thirty-five (35) days, the City of Lewes Board of Public Works plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as the Mitchell Farm.

**THE CITY OF LEWES BOARD OF PUBLIC WORKS HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. THE CITY OF LEWES BOARD OF PUBLIC WORKS ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO MITCHELL FARM UPON COMPLETION AND AWARDED OF THE CERTIFICATE, AS WATER IS ACCESSIBLE AT THE PROPERTY LINE.**

**IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.**

- 1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, you do not have to take any action.
- 2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in the proposed service territory might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "optout" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees.
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provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

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Dover, Delaware 19904

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If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

## SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Cape Henlopen Medical Center  
Attn: Ms Megan Glick & Mr David Blauver  
859 Golf Links Lane  
Magnolia, DE 19962



9590 9403 0457 5173 8499 07

7015 0640 0001 9438 4446

PS Form 3811, April 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

Robert Mackeish

☐ Agent☐ Addressee

## B. Received by (Printed Name)

Robert Mackeish

## C. Date of Delivery

4/3/19

## D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

## 3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

## SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

ATTN: David C. Hatt, Esq  
107 West Market Street  
Georgetown, DE 19944



9590 9403 0457 5173 8498 91

## 2. Article Number (Transfer from service label)

7015 0640 0001 9438 4439

PS Form 3811, April 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

Kathy Fufaro

☐ Agent☐ Addressee

## B. Received by (Printed Name)

Kathy Fufaro

## C. Date of Delivery

4/3/19

## D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

## 3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

UNITED STATES POSTAL SERVICE

03 APR 2019 PM 3:11

03 APR 2019 PM 3:11

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. C-10

• Sender: Please print your name, address, and ZIP+4® in this box®

**Lewes BPW**  
**107 Franklin Avenue**  
**Lewes, Delaware 19958**

USPS TRACKING#



9590 9403 0457 8178 8444 07

UNITED STATES POSTAL SERVICE

03 APR 2019 PM 3:11

03 APR 2019 PM 3:11

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. C-10

• Sender: Please print your name, address, and ZIP+4® in this box®

**Lewes BPW**  
**107 Franklin Avenue**  
**Lewes, Delaware 19958**

USPS TRACKING#



9590 9403 0457 8178 8444 07

# Exhibit C

### **Exhibit C**

<b><u>Proposed Service Area</u></b>	<b><u>Tax Map Parcel Numbers</u></b>	<b><u>Acres</u></b>	<b><u>Owners</u></b>
1	3-35-8.00-37.00	49.53	Mitchell Family, LLC
2	3-35-8.00-37.01	3.00	Cape Henlopen Medical Center, LLC

#### **Service Area 1**

Sussex County Tax Parcel No. 3-35-8.00-37.00 is an individual parcel located near the intersection of Kings Highway and Gills Neck Road in Lewes & Rehoboth Hundred.

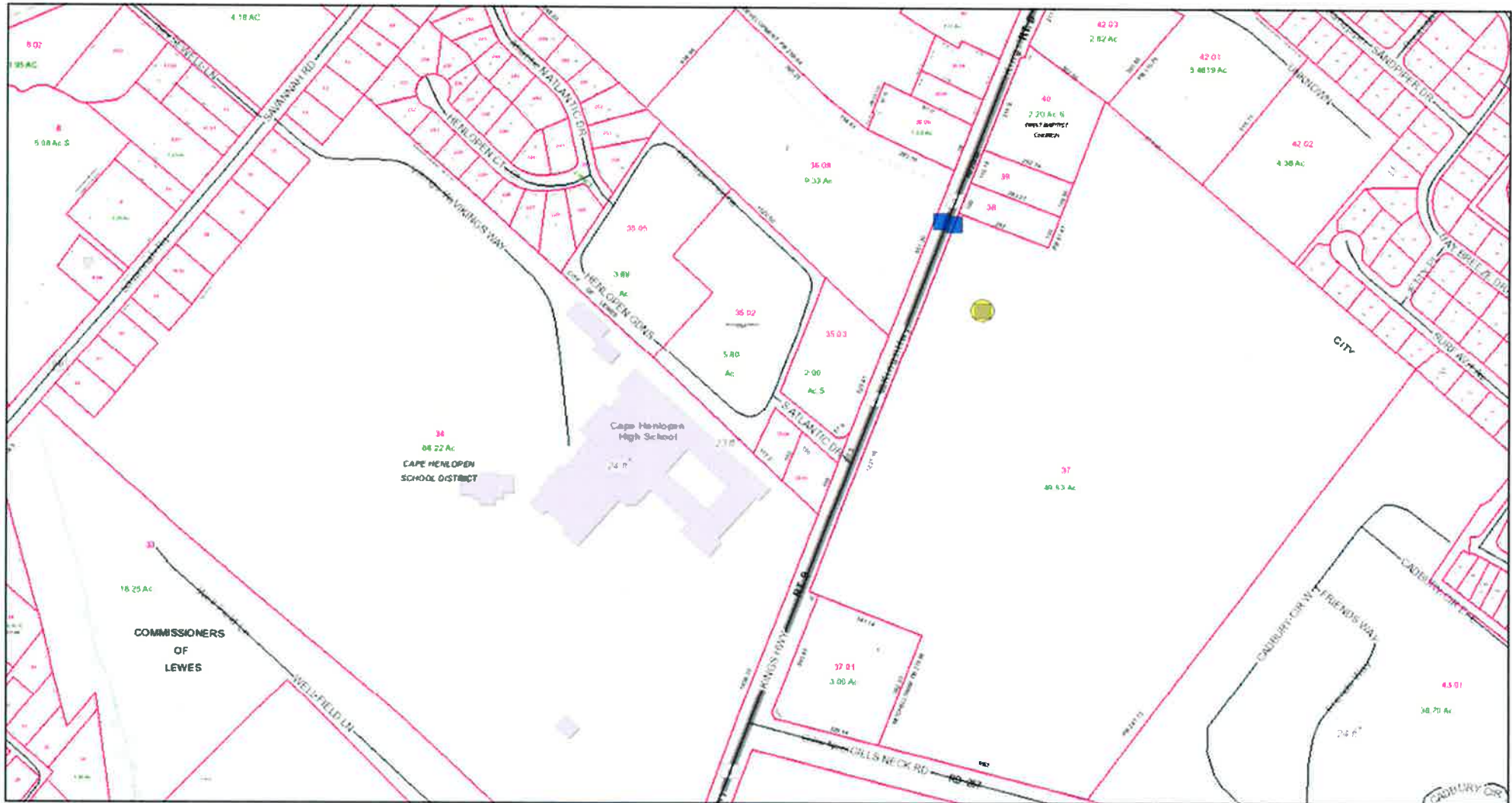
#### **Service Area 2**

Sussex County Tax Parcel No. 3-35-8.00-37.01 is an individual parcel located at the intersection of Kings Highway and Gills Neck Road in Lewes & Rehoboth Hundred

<i>Book</i>	5007
<i>Page</i>	276
<i>Owner Name</i>	CAPE HENLOPEN MEDICAL CENTER LLC
<i>Mailing Address</i>	1413 SAVANNAH RD STE 1
<i>City</i>	LEWES
<i>State</i>	DE
<i>Sewer Account</i>	10-32-037.1
<i>Description</i>	N/RD 267 E/RT 9
<i>Description 2</i>	LOT 1 MITCHELL FARM
<i>Land Code</i>	RV
<i>Town Code</i>	00
<i>LND Improvement</i>	30000
<i>PIN with Unit</i>	335-8.00-37.01
<i>PIN</i>	335-8.00-37.01
<i>Zipcode</i>	19958
<i>Frontage</i>	0
<i>Depth</i>	0
<i>Fire District</i>	82
<i>Council District</i>	3

<i>Book</i>	2820
<i>Page</i>	72
<i>Owner Name</i>	LW JT MITCHELL FAMILY LIMITED
<i>Second Owner Name</i>	PARTNERSHIP
<i>Mailing Address</i>	1019 KINGS HWY
<i>City</i>	LEWES
<i>State</i>	DE
<i>Sewer Account</i>	10-32-037
<i>Description</i>	RD MURRAY'S COR TO
<i>Description 2</i>	LEWES
<i>Land Code</i>	FH0
<i>Town Code</i>	00
<i>BLDG Improvement</i>	31100
<i>LND Improvement</i>	35300
<i>PIN with Unit</i>	335-8.00-37.00
<i>PIN</i>	335-8.00-37.00
<i>Zipcode</i>	19958
<i>Frontage</i>	0
<i>Depth</i>	0
<i>Fire District</i>	82
<i>Council District</i>	3

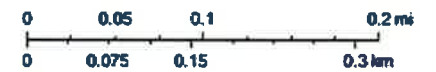
# Sussex County



May 17, 2019

pointLayer  
 County Boundaries  
 Override 1

1:4,514



**MITCHELL FAMILY, LLC**  
**LIMITED LIABILITY COMPANY AGREEMENT**

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "*Agreement*") is entered into this 4<sup>th</sup> day of March, 2019, by and between the following (collectively, the "*Parties*");

**WILLIAM T. MITCHELL, JR.; JAMES LEE MITCHELL; ROBERT P. MITCHELL; and JERRY L. MITCHELL.**

**WHEREAS**, the Parties own all of the partnership interests in L. W. & J. T. Mitchell Family Limited Partnership, a Delaware limited partnership (the "*Partnership*"), which owns the Property (as hereinafter defined); and

**WHEREAS**, the Parties deem the conversion of the Partnership from a Delaware limited partnership into a limited liability company formed and operated under the Delaware Limited Liability Company Act, and in accordance with the terms and subject to the conditions set forth in this Agreement (the "*Conversion*"), to be in the best interests of the Partnership and each of its partners; and

**WHEREAS**, the Parties wish to set forth a governing limited liability company agreement in writing for the convenience of all Members,

**NOW, THEREFORE**, in consideration of the mutual agreements, and such other good and valuable consideration, the receipt of which is hereby acknowledged, hereinafter set forth and subject to all of the terms and conditions hereof, the parties hereto, intending to be legally bound, hereby agree as follows:

**Section I**  
**Defined Terms**

The following terms shall have the meanings specified in this *Section I*. Other terms are defined in the text of this Agreement; and, throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

"*Act*" means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 *et seq.*, as amended from time to time.

"*Affiliate*" means, with respect to any Member, any Person: (i) which owns more than 50% of the voting interests in the Member; or (ii) in which the Member owns more than 50% of the voting interests; or (iii) in which more than 50% of the voting interests are owned by a Person who has a relationship with the Member described in clause (i) or (ii) above.

"*Agreement*" means this Limited Liability Company Agreement, as amended from time to time.

**"Capital Account"** means the account to be maintained by the Company for each Interest Holder in accordance with the following provisions:

- (i) an Interest Holder's Capital Account shall be credited with the Interest Holder's Capital Contributions, the amount of any Company liabilities assumed by the Interest Holder (or which are secured by Company property distributed to the Interest Holder), the Interest Holder's distributive share of Profit and any item in the nature of income or gain specially allocated to such Interest Holder pursuant to the provisions of *Section IV*; and
- (ii) an Interest Holder's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Interest Holder, the amount of any liabilities of the Interest Holder assumed by the Company (or which are secured by property contributed by the Interest Holder to the Company), the Interest Holder's distributive share of Loss, and any item in the nature of expenses or losses specially allocated to the Interest Holder pursuant to the provisions of *Section IV*.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest.

**"Capital Contribution"** means the total amount of cash and the fair market value of any other assets contributed or deemed contributed to the Company by a Member, net of liabilities assumed or to which the assets are subject.

**"Capital Proceeds"** means the gross receipts received by the Company from a Capital Transaction.

**"Capital Transaction"** means any transaction other than in the ordinary course of business which results in the Company's receipt of cash or other consideration other than Capital Contributions, including, without limitation, proceeds of sales or exchanges or other dispositions of property other than in the ordinary course of business, financing, refinancing, condemnations, recoveries of damage awards and insurance proceeds.

**"Cash Flow"** means all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, capital improvements, and replacements as determined by the Manager. Cash Flow shall not include Capital Proceeds but shall be increased by the reduction of any reserve previously established.

*"Certificate of Formation"* means the Certificate of Formation of the Company filed with the Office of the Delaware Secretary of State in accordance with the Act, as it may be amended from time to time.

*"Change of Control"* means, for any Person that is an entity, whenever (i) such Person is party to a merger, consolidation, or reorganization in which such Person is not the surviving entity; or (ii) the direct or indirect ownership of thirty percent (30%) or more of the shares of outstanding common voting stock, partnership units, voting interests, or percentages, or membership units, voting interests, or percentages of such Person has changed over the course of the previous two (2) years.

*"Code"* means the Internal Revenue Code of 1986, as amended, or any corresponding provision of any succeeding law.

*"Company"* means Mitchell Family, LLC, the limited liability company formed in accordance with this Agreement.

*"Company Assets"* means that certain lot, piece or parcel of land, situate, lying and being at the northeasterly intersection of Kings Highway and Gills Neck Road, located in Lewes-Rehoboth Hundred, Sussex County, State of Delaware being known as Sussex County Tax Parcel No. 3-35 8.00 37.00 (the *"Property"*); and such additional real or personal property, tangible or intangible, as the Company may acquire from time to time.

*"Interest"* means an Interest Holder's share of the Profits and Losses of, and the right to receive distributions from the Company.

*"Interest Holder"* means any Person who holds an Interest, whether as a Member or as an assignee of an Interest who has not been admitted to the Company as a Member.

*"Involuntary Withdrawal"* means, with respect to any Member (hereafter, together with any successor in interest to such Member, the *"Withdrawn Member"*), the occurrence of any of the following events:

- (i) the Member makes an assignment for the benefit of creditors;
- (ii) the Member files a voluntary petition of bankruptcy;
- (iii) the Member is adjudged bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (iv) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

- (v) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties;
- (vi) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in *Subsections (i) through (v)*;
- (vii) within one hundred twenty days (120) days of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation if the proceeding has not been dismissed, or within ninety (90) days after the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member's properties without the Member's agreement or acquiescence, which appointment is not vacated or stayed, or if the appointment is stayed, for ninety (90) days after the expiration of the stay which period the appointment is not vacated;
- (viii) if the Member is an individual, the Member's death or adjudication by a court of competent jurisdiction as incompetent to manage the Member's person or property;
- (ix) if the Member is acting as a Member by virtue of being a trustee of a trust, the termination of the trust;
- (x) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company, or a Change of Control of the Member;
- (xi) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter, or a Change of Control of the Member; or
- (xii) if the Member is an estate, the distribution by the fiduciary of the estate's entire Interest in the limited liability company.

"*Manager*" is the Person designated as such in this Agreement, in such Person's capacity as a manager of the Company.

*"Member"* means each Person signing this Agreement and any Person who subsequently is admitted as a member of the Company in accordance with the terms of this Agreement, in each case, in such Person's capacity as a member of the Company.

*"Membership Rights"* means all of the rights of a Member in the Company, including a Member's: (i) Interest; (ii) right to inspect the Company's books and records; and (iii) right to participate in the management of and vote on matters coming before the Company.

*"Negative Capital Account"* means a Capital Account with a balance of less than zero.

*"Percentage"* means, as to a Member, the percentage of the Company's total Interest owned by such Member and, as to an Interest Holder who is not a Member, the Percentage associated with the Interest, or the portion thereof, that has been acquired by such Interest Holder, to the extent the Interest Holder has succeeded to the transferor's Interest therein. The Percentage applicable to each Member shall be recorded on Exhibit A of this Agreement, as amended from time to time.

*"Person"* means and includes any individual, corporation, partnership, association, limited liability company, trust, estate, or other entity.

*"Positive Capital Account"* means a Capital Account with a balance greater than zero.

*"Profit"* and *"Loss"* means, for each taxable year of the Company (or other period for which Profit or Loss must be computed), the net income or net loss of the Company, respectively, for such year or period, determined in accordance with Code Section 703(a), and including any items of gain, income, loss, or deduction that are separately stated for purposes of Code Sections 702(a) and 703(a)(1), as determined in accordance with U.S. federal income tax accounting principles with the following adjustments:

- (i) any income of the Company that is exempt from U.S. federal income tax shall be included as income;
- (ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(i) shall be treated as current expenses;
- (iii) any item of income, gain, loss, or deduction specially allocated pursuant to this Agreement shall be excluded from the determination of Profit and Loss; and
- (iv) no effect shall be given to any adjustments made pursuant to Code Sections 734 or 743;
- (v) in lieu of depreciation, depletion, amortization, and other cost recovery deductions taken into account in computing

total income or loss, there shall be taken into account Depreciation;

- (vi) gain or loss resulting from any Company Asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of such Company Asset rather than its adjusted tax basis; and
- (vii) in the event of an adjustment of the Gross Asset Value of any Company Asset which requires that the Capital Accounts of the Company be adjusted pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(e), (f), or (m), the amount of such adjustment is to be taken into account as additional Profit or Loss.

*"Regulation"* means the income tax regulations, including any temporary regulations, from time to time promulgated under the Code.

*"Transfer"* means any disposition of a Membership Interest, voluntary or involuntary, whether or not for value, including, without limitation, sales, exchanges (including exchanges pursuant to a plan of merger or consolidation, regardless of whether new certificates are issued), gifts, pledges and hypothecations, passage by intestate succession or bequest, vesting of title in a trustee, receiver, conservator, or otherwise in connection with any insolvency, guardianship, or conservatorship proceeding, subjection to judgment lien, and dispositions pursuant to any separation agreement, judicial decree, or judgment entered in connection with any domestic relations proceeding. Notwithstanding the foregoing, the term Transfer does not include:

- (i) an assignment by a Member who is an individual to the trustee of a revocable trust of which the Member is the sole lifetime beneficiary if the trustee becomes a party to this Agreement, provided that the death of the trustor of such revocable trust shall be deemed to be the death of the resulting trustee Member for purposes of this Agreement; or
- (ii) an assignment by a trustee which is a Member in such capacity to a successor trustee of the trust.

*"Voluntary Withdrawal"* means a Member's dissociation with the Company by means other than by a Transfer in compliance with this Agreement or an Involuntary Withdrawal.

## **Section II**

### **Formation and Name: Office; Purpose; Term**

2.1. *Organization.* The parties hereby organize a limited liability company pursuant to the Act and the provisions of this Agreement and, for that purpose, the

Manager shall cause a Certificate of Formation to be executed and filed with the Office of the Secretary of State of the State of Delaware.

2.2. *Name of the Company.* The name of the Company shall be "Mitchell Family, LLC." The Company may do business under that name and under any other name or names upon which the Manager selects in its sole discretion. If the Company does business under a name other than that set forth in its Certificate of Formation, then the Company shall file a fictitious name certificate or any other documents as required by applicable law.

2.3. *Purpose.* The sole purpose of the Company is to acquire, own, manage, improve, maintain, operate, lease, mortgage, sell, exchange or dispose of real estate and personal property.

2.4. *Powers.* In furtherance of its purposes, but subject to all of the provisions of this Agreement, the Company shall have the power and is hereby authorized to:

2.4.1. acquire by purchase, lease, contribution of property or otherwise, own, hold, sell, convey, transfer or dispose of any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purpose of the Company;

2.4.2. (i) secure financing pursuant to one or more notes and secured by one or more mortgages; (ii) to grant a mortgage, security interests or liens on Company Assets to secure the note and such foregoing permitted indebtedness; and (iii) to execute, deliver and perform any other instruments, documents or agreements required in connection with any of the foregoing.

2.4.3. take any and all actions necessary, convenient or appropriate, including the granting or approval of waivers, consents or amendments of rights or powers relating thereto and the execution of appropriate documents to evidence such waivers, consents or amendments;

2.4.4. operate, purchase, maintain, finance, improve, own, sell, convey, assign, mortgage, lease or demolish or otherwise dispose of any real or personal property which may be necessary, convenient or incidental to the accomplishment of the purposes of the Company;

2.4.5. borrow money and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and secure the same by mortgage, pledge or other lien on the assets of the Company.

2.4.6. invest any funds of the Company pending distribution or payment of the same pursuant to the provisions of this Agreement;

2.4.7. prepay in whole or in part, refinance, recast, increase, modify or extend any indebtedness of the Company and, in connection therewith, execute any extensions, renewals or modifications of any mortgage or security agreement securing such indebtedness;

2.4.8. and to do any and all things necessary, convenient, or incidental to that purpose.

2.5. *Term.* Following the Conversion and the acceptance of the Certificate of Formation by the office of the Secretary of State of the State of Delaware, the term of the Company shall have begun on March 21, 2003, the date the Partnership commenced its existence, pursuant to 6 Del. C. § 18-214(d) and shall continue in perpetual existence, unless its existence is sooner terminated pursuant to *Section VII* of this Agreement.

2.6. *Registered Office.* The registered office of the Company in the State of Delaware shall be located at 20773 Atlanta Rd., Seaford, Delaware 19973, or at any other place within the State of Delaware which the Manager shall select. The principal office of the Company shall be located at such place within the State of Delaware or otherwise which the Manager may select from time to time.

2.7. *Registered Agent.* The name of the Company's registered agent in the State of Delaware shall be Robert P. Mitchell.

2.8. *Members.* The name, present mailing address, taxpayer identification number, and percentage of each Member are set forth on *Exhibit A* attached hereto.

2.9. *Ratification of Prior Actions.* The Members hereby ratify and confirm all lawful acts and actions heretofore taken by or in the name of the Partnership, including, without limitation, the Conversion.

### **Section III**

#### **Members; Capital; Capital Accounts**

3.1. *Initial Capital Contributions.* Up to date of this Agreement, the Members have contributed to the Company cash or property in the amounts respectively set forth on *Exhibit A*.

3.2. *Additional Capital Contributions.*

3.2.1. If the Manager at any time or from time to time determines that the Company requires additional Capital Contributions, then the

Manager shall give notice to each Member of (i) the total amount of additional Capital Contributions required, (ii) the reason the additional Capital Contribution is required, (iii) each Member's proportionate share of the total additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Member's additional Capital Contribution is due and payable, which date shall be thirty (30) days after the notice has been given; provided, however, that the total additional Capital Contributions which the Manager may raise from the Members during any one calendar year shall not exceed \$4,000 in the aggregate without the unanimous consent of all Members. A Member's proportionate share of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Member's Percentage and the total additional Capital Contribution required. A Member's proportionate share shall be payable in cash or by certified check or by wire transfer.

3.2.2. Except as provided in *Section 3.2.1*, no Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company or any other Member except to the extent provided in *Section 3.2.3*.

3.2.3. If a Member fails to pay when due all or any portion of any Capital Contribution, the Manager shall request the non-defaulting Members to pay the unpaid amount of the defaulting Member's Capital Contribution (the "Unpaid Contribution"). To the extent the Unpaid Contribution is contributed by any other Member, the defaulting Member's Percentage shall be reduced and the Percentage of each Member who makes up the Unpaid Contribution shall be increased, so that each Member's Percentage is equal to a fraction, the numerator of which is that Member's total Capital Contribution and the denominator of which is the total Capital Contributions of all Members. The Manager shall amend *Exhibit A* accordingly. This remedy is in addition to any other remedies allowed by law or by this Agreement.

3.3. *No Interest on Capital Contributions.* Interest Holders shall not be paid interest on their Capital Contributions.

3.4. *Return of Capital Contributions.* Except as otherwise provided in this Agreement, no Interest Holder shall have the right to the return of any Capital Contribution.

3.5. *Capital Accounts.* A separate Capital Account shall be maintained for each Interest Holder.

3.6. *Loans.* Nothing herein shall preclude the Company from borrowing from one or more Members such additional funds as it may from time to time require, in such amount and on such terms upon which the Manager and any such lending Member shall agree.

#### **Section IV Profit, Loss, and Distributions**

4.1. *Distributions of Cash Flow and Allocations of Profit or Loss Other than from Capital Transactions.*

4.1.1. *Profit or Loss Other Than from a Capital Transaction.* After giving effect to the special allocations set forth in *Section 4.4*, for any taxable year of the Company, Profit or Loss (other than Profit or Loss resulting from a Capital Transaction, which Profit or Loss shall be allocated in accordance with the provisions of *Sections 4.2.1* and *4.2.2*) shall be allocated to the Interest Holders in proportion to their Percentages.

4.1.2. *Cash Flow.* Cash Flow for each taxable year of the Company shall be distributed to the Interest Holders in proportion to their Percentages no later than seventy-five (75) days after the end of the taxable year.

4.2. *Distribution of Capital Proceeds and Allocation of Profit or Loss from Capital Transactions.*

4.2.1. *Profit.* After giving effect to the special allocations set forth in *Section 4.4*, Profit from a Capital Transaction shall be allocated as follows:

4.2.1.1. If one or more Interest Holders has a Negative Capital Account, to those Interest Holders, in proportion to their Negative Capital Accounts, until all of those Negative Capital Accounts have been reduced to zero.

4.2.1.2. Any Profit not allocated pursuant to *Section 4.2.1.1* shall be allocated to the Interest Holders in proportion to, and to the extent of, the amounts that would hypothetically be distributable to them from such Capital Transaction pursuant to *Section 4.2.3.4.3* without regard to any allocation of Profit under this *Section 4.2.1* relating to such Capital Transaction..

4.2.1.3. Any Profit in excess of the foregoing allocations shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.2. *Loss.* After giving effect to the special allocations set forth in *Section 4.3*, Loss from a Capital Transaction shall be allocated as follows:

4.2.2.1. If one or more Interest Holders has a Positive Capital Account, to those Interest Holders, in proportion to their Positive Capital Accounts, until all Positive Capital Accounts have been reduced to zero.

4.2.2.2. Any Loss not allocated to reduce Positive Capital Accounts to zero pursuant to *Section 4.2.2.1* shall be allocated to the Interest Holders in proportion to their Percentages.

4.2.3. *Capital Proceeds.* Capital Proceeds shall be distributed and applied by the Company in the following order and priority:

4.2.3.1 to the payment of all expenses of the Company incident to the Capital Transaction; then

4.2.3.2. to the payment of debts and liabilities of the Company then due and outstanding (including all debts due to any Interest Holder); then

4.2.3.3. to the establishment of any reserves which the Manager deems necessary for liabilities or obligations of the Company; then

4.2.3.4. the balance shall be distributed as follows:

4.2.3.4.1. to the Interest Holders in proportion to their Adjusted Capital Balances, until their remaining Adjusted Capital Balances have been paid in full;

4.2.3.4.2. if any Interest Holder has a Positive Capital Account after the distributions made pursuant to *Section 4.2.3.4.1* and before any

further allocation of Profit pursuant to *Section 4.2.1.3*, to those Interest Holders in proportion to their Positive Capital Accounts; then

4.2.3.4.3. the balance, to the Interest Holders in proportion to their Percentages.

**4.3. *Liquidation and Dissolution.***

4.3.1. If the Company is liquidated, the assets of the Company shall be distributed to the Interest Holders in accordance with the balances in their respective Capital Accounts, after taking into account the allocations of Profit or Loss pursuant to *Sections 4.1* or *4.2*, if any, and distributions of cash or property pursuant to *Sections 4.1* and *4.2.3*, if any.

4.3.2. No Interest Holder shall be obligated to restore a Negative Capital Account.

**4.4. *Special Allocations.*** The Capital Account of each Interest Holder shall be maintained in accordance with the Code and the Regulations, including without limitation, Treas. Reg. § 1.704-1(b)(2)(iv), the alternative test for economic effect set forth in Treas. Reg. § 1.704-1(b)(2)(ii)(d) and the minimum gain chargeback provisions of Treas. Reg. § 1.704-2. Nothing in this Agreement is intended to create a deficit restoration obligation or otherwise impose personal liability on an Interest Holder for a deficit in such Interest Holder's Capital Account.

**4.5. *General.***

4.5.1. Except as otherwise provided in this Agreement, the timing and amount of all distributions shall be determined by the Manager.

4.5.2. The Company Assets may be distributed in kind to the Interest Holders, and those assets shall be valued on the basis of their fair market value. Unless the Members otherwise agree, the fair market value of the assets shall be determined by an independent appraiser who shall be selected by the Manager. The Profit or Loss for each unsold asset shall be determined as if the asset had been sold at its fair market value, and the Profit or Loss shall be allocated as provided in *Section 4.2* and shall be properly credited or charged to the Capital Accounts of the Interest Holders prior to the distribution of the assets in liquidation pursuant to *Section 4.5*.

4.5.3. All Profit and Loss shall be allocated, and all distributions shall be made to the Persons shown on the records of the Company to have been Interest Holders as of the last day of the taxable year for which the allocation or distribution is to be made. Notwithstanding the foregoing, unless the Company's taxable year is separated into segments, if there is a Transfer or an Involuntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Interest Holder and the successor on the basis of the number of days each was an Interest Holder during the taxable year; provided, however, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss or proceeds attributable to a Capital Transaction or to any other extraordinary non-recurring items of the Company.

4.5.4. The Manager is hereby authorized, upon the advice of the Company's tax counsel, to amend this *Article IV* to comply with the Code and the Regulations promulgated under Code Section 704(b); provided, however, that no amendment shall materially affect distributions to an Interest Holder without the Interest Holder's prior written consent.

## **Section V**

### **Management: Rights, Powers, and Duties**

#### **5.1. *Management.***

5.1.1. *Manager.* The Company shall be managed by a Manager, who may, but need not, be a Member. Robert P. Mitchell is hereby designated to serve as the initial Manager.

5.1.2. *General Powers.* The Manager shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including without limitation, for Company purposes, the power to:

5.1.2.1. acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible;

5.1.2.2. construct, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage, or lease any of the Company Assets;

5.1.2.3. enter into agreements and contracts in connection with the Company's business;

5.1.2.4. purchase liability and other insurance to protect the Company's properties and business;

5.1.2.5. borrow money for and on behalf of the Company, and, execute any guaranty on behalf of a third party;

5.1.2.6. execute or modify agreements or contracts with respect to any part or all of the Company's Assets;

5.1.2.7. prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any Company Asset and, in connection therewith, to execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust;

5.1.2.8. execute any and all other instruments and documents which may be necessary or in the opinion of the Manager desirable to carry out the intent and purpose of this Agreement;

5.1.2.9. make any and all expenditures which the Manager, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting, and other related expenses incurred in connection with the organization, financing, and operation of the Company;

5.1.2.10. enter into any kind of activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company; and

5.1.2.11. invest and reinvest Company reserves in short term instruments or money market funds.

**5.1.3. *Extraordinary Transactions.***

**5.1.3.1.** Notwithstanding anything to the contrary in this Agreement, the Manager shall not undertake any of the following without the approval of the Members:

- (i) enter into any Capital Transaction;
- (ii) lend, assume, or guaranty debt; or
- (iii) cause the Company to engage in business in any jurisdiction which does not provide for the registration of limited liability companies.

**5.1.3.2.** Notwithstanding anything to the contrary in this Agreement, the Manager shall not issue an Interest or admit additional or substitute Members to the Company without the unanimous approval of the Members.

**5.1.4. *Limitation on Authority of Members.***

**5.1.4.1.** No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for the Company solely by virtue of being a Member.

**5.1.4.2.** This *Section 5.1* supersedes any authority granted to the Members pursuant to the Act. Any Member who takes any action or binds the Company in violation of this *Section 5.1* shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

**5.1.5. *Removal of Manager.*** The Members, at any time and from time to time and for any reason, may remove the Manager then acting and appoint a new Manager.

**5.2. *Meetings of and Voting by Members.***

**5.2.1.** A meeting of the Members may be called at any time by the Manager or by those Members holding at least a majority of the

Percentages then held by Members. Meetings of Members shall be held at the Company's principal office or at any other place designated by the Person calling the meeting, and may be held by e-mail transaction, provide all members so consent. Not less than ten (10) nor more than ninety (90) days before each meeting, the Person calling the meeting shall give written or e-mailed notice of the meeting to each Member entitled to vote at the meeting. The notice shall state the time, place, and purpose of the meeting. Notwithstanding the foregoing provisions, each Member who is entitled to notice waives notice if before or after the meeting, the Member signs a waiver of the notice which is filed with the records of Members' meetings, or if such Member is present at the meeting in person, by e-mail or by proxy. Unless this Agreement provides otherwise, at a meeting of Members, the presence in person, by e-mail or by proxy of Members holding not less than a majority of the Percentages then held by Members constitutes a quorum; provided, however, that this definition of a quorum shall have no effect on the voting standard that is required for the Members to approve any determination considered at the meeting, and the relevant voting standard set forth in this Agreement for any such determination shall govern in all cases. A Member may vote either in person, by e-mail, or by written proxy signed by the Member or by his duly authorized attorney in fact, provided such proxy has not been revoked by such Member or such Member's duly authorized attorney-in-fact or expired by its own terms. A Member may participate in a meeting thereof by means of conference telephone or similar communications equipment which allows all persons participating in the meeting to hear each other, and such participation shall constitute presence in person at such meeting by such Member.

5.2.2. Except as otherwise provided in this Agreement, wherever this Agreement requires the approval of the Members, the affirmative vote of members holding a majority of the Percentages then held by Members shall be required to approve the matter.

5.2.3. In lieu of holding a meeting, the Members may vote or otherwise take action by a written instrument or e-mail indicating the consent of Members holding at least that number of Percentages that would be necessary to adopt such action at a meeting attended by all Members.

### 5.3. *Personal Services.*

5.3.1. No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Manager, no Member shall perform services for the Company or

be entitled to compensation for services performed for the Company.

5.3.2. Unless approved by the Members, the Manager shall not be entitled to compensation for services performed for the Company. However, upon substantiation of the amount and purpose thereof, the Manager shall be entitled to reimbursement for expenses reasonably incurred in connection with the activities of the Company.

#### *5.4. Duties of Parties.*

5.4.1. The Manager shall devote such time to the business and affairs of the Company as is necessary to carry out the Manager's duties set forth in this Agreement.

5.4.2. Except as otherwise expressly provided in *Section 5.4.3*, nothing in this Agreement shall be deemed to restrict in any way the rights of the Manager or any Member, or of any Affiliate of the Manager or any Member, to conduct any other business or activity whatsoever, and the Manager or any Member shall not be accountable to the Company or to any Member with respect to that business or activity even if the business or activity competes with the Company's business. The organization of the Company shall be without prejudice to their respective rights (or the rights of their respective Affiliates) to maintain, expand, or diversify such other interests and activities and to receive and enjoy profits or compensation therefrom. Each Member waives any rights the Member might otherwise have to share or participate in such other interests or activities of the Manager or any other Member or the Manager's or Member's Affiliates.

5.4.3. Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. In any of those cases, those dealings and undertakings shall be at arm's length and on commercially reasonable terms as determined by the Manager.

#### *5.5. Liability and Indemnification.*

5.5.1. The Manager shall not be liable, responsible, or accountable, in damages or otherwise, to any Member or to the Company for any act performed by the Manager within the scope of the authority conferred on the Manager by this Agreement, except for fraud, gross negligence, willful misconduct, or an intentional breach of this Agreement.

5.5.2. The Company shall indemnify the Manager for any act performed by the Manager within the scope of the authority conferred on the Manager by this Agreement, except for fraud, gross negligence, willful misconduct or an intentional breach of this Agreement.

5.6. *Power of Attorney.*

5.6.1. *Grant of Power.* Each Member constitutes and appoints the Manager as the Member's true and lawful attorney-in-fact ("Attorney-in-Fact"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file:

5.6.1.1. the Certificate of Formation;

5.6.1.2. all documents (including amendments to the Certificate of Formation) which the Attorney-in-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;

5.6.1.3. any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Delaware or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Delaware;

5.6.1.4. one or more fictitious or trade name certificates; and

5.6.1.5. all documents which may be required to dissolve and terminate the Company and to cancel its Certificate of Formation.

5.6.2. *Irrevocability.* The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the death or disability of a Member and be binding on such Member's heirs. It also shall survive the Transfer of an Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge and file any documents needed to effectuate the substitution. Each Member shall

be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

## **Section VI**

### **Transfer of Interests and Withdrawals of Members**

#### **6.1. *Transfers.***

6.1.1. No Person may Transfer all or any portion of or any interest or rights in the Person's Membership Rights or Interest unless the following conditions ("Conditions of Transfer") are satisfied:

6.1.1.1. The Transfer will not require registration of Interests or Membership Rights under any federal or state securities laws;

6.1.1.2. The transferee delivers to the Company a written instrument agreeing to be bound by the terms of this Agreement.

6.1.1.3. The Transfer will not result in the Company being subject to the Investment Company Act of 1940, as amended;

6.1.1.4. The transferor or the transferee delivers the following information to the Company: (i) the transferee's taxpayer identification number and (ii) the transferee's initial tax basis in the Transferred Interest;

6.1.1.5. The transfer will not result in the Company being taxed as a corporation for purposes of federal or state income tax purposes.

6.1.2. If the Conditions of Transfer are satisfied, then a Member or Interest Holder may Transfer all or any portion of that Person's Interest in accordance with *Section 6.1.4*. The Transfer of an Interest pursuant to this *Section 6.1* shall not result, however, in the Transfer of any of the transferor's other Membership Rights, if any, and the transferee of the Interest shall have no right to become a Member or exercise any Membership Rights other than those specifically pertaining to the ownership of an Interest without the consent of the Members required by this Agreement.

6.1.3. Each Member hereby acknowledges the reasonableness of the prohibition contained in this *Section 6.1* in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Rights or Interests in violation of the prohibition contained in this *Section 6.1* shall be deemed invalid, null and void, and of no force or effect. Any Person to whom Membership Rights are attempted to be transferred in violation of this Section shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company or have any other rights in or with respect to the Membership Rights.

6.1.4. *Right of First Offer.*

6.1.4.1. If an Interest Holder (a "Transferor") desires to Transfer all or any portion of, or any interest or rights in, the Transferor's Interest (the "Transferor Interest"), the Transferor shall notify the Company of that desire (the "Transfer Notice"). The Transfer Notice shall describe the Transferor Interest. The Company shall have the option (the "Purchase Option") to purchase all of the Transferor Interest for a price (the "Purchase Price") equal to the amount the Transferor would receive if the Company were liquidated and an amount equal to the Appraised Value (as determined pursuant to *Section 6.4*) were available for distribution to the Members pursuant to *Section 4.5*.

6.1.4.2. The Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") ending at 11:59 P.M. local time at the Company's principal office on the thirtieth (30th) Day following the Transfer Notice is given to the Company.

6.1.4.3. At any time during the Transfer Period, the Company may elect to exercise the Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be deemed a Member for the purpose of voting on whether the Company shall elect to exercise the Purchase Option.

6.1.4.4. If the Company elects to exercise the Purchase Option, the Company's notice of its election shall fix a closing date (the "Transfer

Closing Date”) for the purchase, which shall not be earlier than five (5) days after the date of the notice of election or more than thirty (30) days after the expiration of the Transfer Period.

6.1.4.5. If the Company elects to exercise the Purchase Option, the Purchase Price shall be paid in cash on the Transfer Closing Date.

6.1.4.6. If the Company fails to exercise the Purchase Option, the Transferor shall be permitted to offer and sell for a period of ninety (90) days (the “Free Transfer Period”) after the expiration of the Transfer Period at a price not less than the Purchase Price. If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor’s right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate.

6.1.4.7. Any Transfer of the Transferor Interest made after the last day of the Free Transfer Period or without strict compliance with the terms, provisions and conditions of this Section and other terms, provisions, and conditions of this Agreement, shall be null, void, and of no force or effect.

6.2. *Voluntary Withdrawal.* No Member shall have the right or power to effect a Voluntary Withdrawal from the Company. Any Member who effectuates a Voluntary Withdrawal in violation of this Agreement shall not be permitted to receive the fair value of the Member’s Interest as of the date of the Voluntary Withdrawal as otherwise provided in Section 18-604 of the Act.

6.3. *Optional Buy-Out in Event of Involuntary Withdrawal.*

6.3.1. *Deemed Offer.* Upon an Involuntary Withdrawal, the Withdrawn Member shall be deemed to offer for sale (the “Withdrawal Offer”) to the Company all of the Membership Rights owned of record and beneficially by the Withdrawn Member (the “Withdrawal Interest”) at the Purchase Price that would apply to the Withdrawal Interest under Section 6.1.4.1, and the Withdrawn Member shall thereupon become an Interest Holder pending the resolution of the Withdrawal Offer, but shall not remain or become a Member.

6.3.2. *Timing for Acceptance.* The Withdrawal Offer shall be and remain irrevocable for a period (the “Withdrawal

*Offer Period*") ending at 11:59 P.M. local time at the Company's principal office on the one hundred twentieth (120th) day following the later of the date on which the Involuntary Withdrawal occurred or the date on which the Company first had actual notice of the Involuntary Withdrawal; provided however, in all events the Withdrawal Offer Period shall continue for a term of not less than thirty (30) days after the Purchase Price is determined under Sections 6.1.4.1 and 6.3.1. At any time during the Withdrawal Offer Period, the Company may accept the Withdrawal Offer by notifying the Withdrawn Member (the "*Withdrawal Notice*") of its acceptance. The Withdrawn Member, as an Interest Holder only, shall not be deemed a Member for the purpose of voting on whether the Company shall accept the Withdrawal Offer.

6.3.3. *Closing Date.* If the Company accepts the Withdrawal Offer, the Withdrawal Notice shall fix a closing date (the "*Withdrawal Closing Date*") for the purchase that shall not be less than ten (10) days after the date of the Withdrawal Notice or more than sixty (60) days after the expiration of the Withdrawal Offer Period, and the Purchase Price shall be paid in cash on the Withdrawal Closing Date.

6.3.4. *Status if Offer Not Accepted.* If the Company fails to accept the Withdrawal Offer, then the Withdrawn Member (or the Withdrawn Member's successor in interest by virtue of the event that caused the Involuntary Withdrawal, as the case may be), upon the expiration of the Withdrawal Offer Period, shall thereafter continue as an Interest Holder, but shall not be admitted or re-admitted, as the case may be, as a Member without the unanimous consent of the Members to such admission. The Withdrawn Member shall not be entitled to receive the fair value of his or her Interest as of the date of the Involuntary Withdrawal as otherwise provided upon resignation under section 18-604 of the Act.

6.3.5. *Pro Rata Purchase by Remaining Members.* In lieu of the Company accepting the Withdrawal Offer, the Members may elect, by a Majority Vote of Members (excluding the Withdrawn Member from voting on such determination), for the Withdrawal Offer to be held by the Members themselves rather than by the Company. If the Withdrawal Offer is so held by the Members, all of the Members (other than the Withdrawn Member) may elect to accept the Withdrawal Offer in proportion to their remaining Percentages or, if less than all of such Members are

interested in purchasing a portion or all of the Withdrawal Interest, may elect to allow those Members who are interested to accept the Withdrawal Offer in proportion to their Percentages, and on the same terms and conditions as set forth in this *Section 6.3*, by specifying such election and providing the Withdrawal Notice during the Withdrawal Offer Period.

#### *6.4. Appraised Value.*

6.4.1. The term "Appraised Value" means the appraised value of the equity of the Company's assets as hereinafter provided. Within fifteen (15) days after demand by either one or the other, the Company and the Withdrawing Member shall each appoint an appraiser to determine the value of the equity of the Company's Assets. If the two appraisers agree upon the equity value of the Company's Assets, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the equity value of the Company's Assets, they shall each render a separate written report and shall appoint a third appraiser, who shall appraise the Company's Assets and determine the value of the equity therein, and shall render a written report of his opinion thereon. Each party shall pay the fees and costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

6.4.2. The equity value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the Appraised Value; provided, however, that if the value of the equity contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall govern; and provided, further, that if the value of the equity contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall govern.

### **Section VII**

#### **Dissolution, Liquidation, and Termination of the Company**

7.1. *Events of Dissolution.* The Company shall be dissolved upon the happening of any of the following events:

7.1.1. when the period fixed for its duration in *Section 2.4* has expired;

7.1.2. upon the unanimous written agreement of all of the Members without the consent of the Manager;

7.1.3. upon the sale of all or substantially all of the assets of the company; or

7.1.4. the entry of a decree of judicial dissolution under 6 Del. C. § 18-802.

7.2. *Procedure for Winding Up and Dissolution.* If the Company is dissolved, the Manager shall wind up its affairs. If there shall be no Manager, the Members shall elect a Person to wind up the affairs of the Company. On winding up of the Company, the assets of the Company shall be distributed, first, to creditors of the Company, including Interest Holders who are creditors, in satisfaction of the liabilities of the Company, and then to the Interest Holders in proportion to their respective Capital Accounts.

7.3. *Filing of Certificate of Cancellation.* Upon completion of the winding up of the affairs of the Company, the Manager shall promptly file a Certificate of Cancellation with the Office of the Secretary of State of the State of Delaware. If the Manager has caused the dissolution of the Company, whether voluntarily or involuntarily, then a Person selected by a majority vote of the Members to wind up the affairs of the Company shall file the Certificate of Cancellation.

## **Section VIII**

### **Books, Records, Accounting, and Tax Elections**

8.1. *Bank Accounts.* All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Manager shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

8.2. *Books and Records.*

8.2.1. The Manager shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company, a copy of the Certificate of

Formation and Limited Liability Company Agreement and all amendments to the Certificate of Formation and the Limited Liability Company Agreement; a current list of the names and last known business, residence, or mailing addresses of all Members; and the Company's federal, state, or local tax returns.

8.2.2. The books and records shall be maintained in accordance with generally accepted accounting practices and shall be available at the Company's principal office for examination by any Member or the Member's duly authorized representative at any and all reasonable times during normal business hours for any purpose reasonably related to such Member's interest as a Member.

8.2.3. Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

8.3. *Annual Accounting Period.* The annual accounting period of the Company shall be its taxable year. The Company's taxable year shall be selected by the Manager, subject to the requirements and limitations of the Code.

8.4. *Reports.* Within seventy-five (75) days after the end of each taxable year of the Company, the Manager shall cause to be sent to each Person who was an Interest Holder at any time during the taxable year then ended, that tax information concerning the Company which is necessary for preparing the Interest Holder's income tax returns for that year. At the request of any Member, and at the Member's expense, the Manager shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by the Member.

8.5. *Partnership Representative.*

8.5.1. The Manager shall serve as the "partnership representative" as provided in Code Section 6223(a), as amended by the Bipartisan Budget Act of 2015 (the "BBA") (the "*Partnership Representative*"). The Partnership Representative may resign at any time provided that there is another Person eligible hereunder to act as the Partnership Representative. The Partnership Representative can be removed at any time by Majority Vote of the Members, and shall resign if it is no longer eligible hereunder to act as the Partnership Representative. In the event of the resignation

or removal of the Partnership Representative, the Members shall select a replacement Partnership Representative. If the resignation or removal of the Partnership Representative occurs prior to the effectiveness of the resignation or removal under applicable Treasury Regulations or other administrative guidance, the resignation or removal shall be effective upon the earliest date provided for in such Treasury Regulations or administrative guidance, and the outgoing Partnership Representative shall take any and all actions and sign and deliver any and all documents, instruments, elections, and agreements as directed by the Manager until such resignation or removal is effective for purposes of the BBA and a successor Partnership Representative as designated consistent with this Agreement has been appointed in the manner required under the BBA.

8.5.2. The Partnership Representative may, but need not, be a Member; provided that, a Person who is not then a Member shall only be eligible as the Partnership Representative if such Person is (i) qualified under governing Code and Treasury Regulations to act as a Partnership Representative, and (ii) is a natural person who is an Affiliate of a Member.

8.5.3. The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by each and any federal, state, local or foreign taxing authority (a "*Taxing Authority*"), including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Partnership Representative shall have sole authority to act on behalf of the Company in any such examinations and any resulting administrative or judicial proceedings, and shall have sole authority to act on behalf of the Company with respect to Company action (either in its own right or on behalf of the Members) in contesting or continuing to contest any tax deficiencies assessed or proposed to be assessed by any Taxing Authority; provided, however, that the Partnership Representative must act with diligence and in good faith. The Partnership Representative's duties hereunder shall also extend to serving as Tax Matters Partner (as defined in Code Section 6231 prior to the enactment of the BBA) for any such proceeding that relates to a taxable year of the Company beginning prior to January 1, 2018, except that the Members understand that the provisions of this *Section 8.5* relating to application of the BBA or the BBA Procedures

(as defined below) are generally inapplicable during such proceeding. The Partnership Representative shall promptly notify the Members of the commencement of any tax audit of the Company, upon receipt of a tax assessment, and upon the receipt of a notice of final partnership administrative adjustment or final partnership adjustment, and shall keep the other Members reasonably informed of the status of any tax audit or resulting administrative or judicial proceeding. The Partnership Representative shall be entitled to indemnity from the Company for any act performed within the scope of its duties under this *Section 8.5*, except for grossly negligent or willful actions or grossly negligent failures to act in the capacity of Partnership Representative; provided, however, that any such indemnity shall be paid out of the Company Assets, and no Member shall have any personal liability on account thereof.

8.5.4. To the extent permitted by applicable law and regulations, the Partnership Representative on behalf of the Company shall annually elect out of the partnership audit procedures enacted under Section 1101 of the BBA (the "*BBA Procedures*") for all tax years pursuant to Code Section 6221(b), as amended by the BBA. For any year in which an effective election out of the BBA Procedures pursuant to the previous sentence is not made, or applicable law and regulations do not permit the Company to elect out of the BBA Procedures, then within forty-five (45) days of any notice of final partnership adjustment, the Company shall elect the alternative, "push-out" procedure for the handling of imputed underpayments, penalties, and interest under Code Section 6226, as amended by the BBA, and furnish to the Internal Revenue Service and each Member (including former Members) during the year or years to which the notice of final partnership adjustment relates a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment.

8.5.5. Each Member agrees that such Member shall cooperate with the Partnership Representative and shall do or shall refrain from doing any or all things as are reasonably required by the Partnership Representative in its capacity as same or as Tax Matters Partner; including, without limitation, refraining from treating any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any

Member or former Member (including, without limitation, penalties, additions to tax, or interest imposed with respect to such taxes and any taxes imposed pursuant to Code Section 6226, as amended by the BBA) shall be paid by such Member or if required to be paid (or actually paid) by the Company will be recoverable by the Company from such Member.

8.5.6. The obligations of the Partnership Representative and each Member or former Member under this *Section 8.5* shall survive the transfer or redemption of its membership interest, the purported removal or resignation of any Partnership Representative in accordance with this *Section 8.5*, the termination of this Agreement, and the dissolution of the Company.

8.6. *Tax Elections.* The Manager shall have the authority to make all Company elections permitted under the Code, including, without limitation, elections of methods of depreciation and elections under Code Section 754. The decision to make or not make an election shall be at the Manager's sole and absolute discretion, subject to the Manager's obligations to act in the best interest of the Company and its Members.

8.7. *Title to Company Assets.*

8.7.1. Except as provided in *Section 8.7.2*, all real and personal property acquired by the Company shall be acquired and held by the Company in its name.

8.7.2. The Manager may direct that legal title to all or any portion of the Company's Assets be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Manager may cause title to be acquired and held in its name or in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's Assets (or any part thereof) is solely for the convenience of the Company, and all of Assets shall be treated as Company Assets.

## **Section IX**

### **General Provisions**

9.1. *Assurances.* Each Member shall execute all such certificates and other documents and shall do all such filing, recording, publishing, and other acts as the Manager deems appropriate to comply with the requirements of law

for the formation and operation of the Company and to comply with any laws, rules and regulations relating to the acquisition, operation or holding of the property of the Company.

**9.2. *Notifications.*** Any notice, demand, consent, election, offer, approval, request, or other communication (collectively a “notice”) required or permitted under this Agreement must be in writing and either delivered personally, e-mail transmitted with verified transmission time and date or sent by certified or registered mail, postage prepaid, return receipt requested. Any notice to be given hereunder by the Company shall be given by the Manager. A notice must be addressed to an Interest Holder at the Interest Holder’s last known address on the records of the Company, which shall be listed on *Exhibit A* as updated from time to time. A notice to the Company must be addressed to the Company’s principal office. A notice delivered personally will be deemed given only when acknowledged in writing by the person to whom it is delivered. A notice that is sent by mail will be deemed given three (3) business days after it is mailed. A notice that is sent by e-mail will be deemed given upon confirmation of “sent” e-mail. Any party may designate, by notice to all of the others, substitute addresses or addressees for notices; and, thereafter, notices are to be directed to those substitute addresses or addressees.

**9.3. *Complete Agreement.*** This Agreement constitutes the complete and exclusive statement of the agreement among the Members. It supersedes all prior written and oral statements, including any prior representation, statement, condition, or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all of the Members.

**9.4. *Applicable Law.*** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed by this Agreement shall be governed by the internal law, not the law of conflicts, of the State of Delaware.

**9.5. *Section Titles.*** The headings herein are inserted as a matter of convenience only, and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

**9.6. *Binding Provisions.*** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors, and assigns; provided, however, that no party may assign or transfer any of its rights, interests, or obligations under this Agreement except as expressly provided herein.

9.7. *Jurisdiction and Venue.* Each Member or Manager agrees that the Delaware Court of Chancery shall be the exclusive forum in connection with any action to enforce, for breach of, or otherwise involving this Agreement; provided, however, in the event that the Delaware Court of Chancery lacks subject matter jurisdiction over any such action, then the action can be brought only in a Delaware federal or state court that does have subject matter jurisdiction. By entering into this Agreement, each Member or Manager agrees that such Member or Manager is transacting business within the meaning of 10 Del. C. § 3104 and hereby irrevocably consents to personal jurisdiction in the Delaware courts for any action to enforce, for breach of, or otherwise involving this Agreement.

9.8. *Terms.* Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular, and plural, as the identity of the Person may in the context require.

9.9. *Separability of Provisions.* Each and every provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and such invalid provision or provisions shall be interpreted so as to be enforced to the greatest extent permitted by law.

9.10. *Counterparts.* This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

9.11. *No Right of Partition.* Each Member irrevocably waives any right such Member may have to cause Company Assets to be partitioned or otherwise divided among the Members or any other Person, or to file a complaint or institute any proceeding at law or in equity to cause Company Assets to be partitioned or otherwise divided among the Members or any other Person.

9.12. *No Rights to Third-Parties.* The provisions of this Agreement are intended to benefit the Members and, to the full extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company, and no such creditor of the Company shall be a third-party beneficiary of this Agreement. The Members shall have no duty or obligation to any creditor of the Company to make any contribution of capital to the Company. The Manager shall have no fiduciary duty to the Company's creditors or obligation to call upon the Members to contribute any capital pursuant to this Agreement, except those duties to the Members expressly provided by this Agreement.

9.13. *Legal Representation.* Each party to this Agreement acknowledges that THIS AGREEMENT HAS BEEN PREPARED BY COUNSEL REPRESENTING THE COMPANY and that counsel has informed each party that a conflict of interest may exist between that party and one or more other parties to this Agreement. Having BEEN ADVISED TO RETAIN INDEPENDENT COUNSEL for advice regarding their respective rights and obligations under this Agreement, and having had the opportunity to do so, each party acknowledges that either independent counsel has been consulted by that party or that party, knowing of the potential conflict, nevertheless waives the right to independent counsel. Accordingly, no question of interpretation or construction with regard to this Agreement shall be based upon consideration of authorship.

*{Signature Page Follows}*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement to be effective the year and day first written above.

MANAGER:

  
\_\_\_\_\_  
ROBERT P. MITCHELL

MEMBERS:

  
\_\_\_\_\_  
WILLIAM T. MITCHELL, JR.

  
\_\_\_\_\_  
JAMES LEE MITCHELL

  
\_\_\_\_\_  
ROBERT P. MITCHELL

  
\_\_\_\_\_  
JERRY L. MITCHELL

**MITCHELL FAMILY, LLC  
LIMITED LIABILITY OPERATING AGREEMENT  
EXHIBIT A**

<u>Name and Address</u>	<u>Initial Capital Contribution</u>	<u>Percentages</u>
William T. Mitchell, Jr. 16856 Gills Neck Road Lewes, DE 19958	¼ interest in SCTP No. 3-35 8.00 37.00	25%
James Lee Mitchell 24634 Lewes Georgetown Highway Georgetown, DE 19947	¼ interest in SCTP No. 3-35 8.00 37.00	25%
Robert P. Mitchell 20773 Atlanta Road Seaford, DE 19973	¼ interest in SCTP No. 3-35 8.00 37.00	25%
Jerry L. Mitchell 1019 Kings Highway Lewes, DE 19958	¼ interest in SCTP No. 3-35 8.00 37.00	25%

**CERTIFICATE OF CONVERSION  
FROM A DELAWARE LIMITED PARTNERSHIP  
TO A DELAWARE LIMITED LIABILITY COMPANY OF  
MITCHELL FAMILY, LLC  
(f/k/a L. W. & J. T. MITCHELL FAMILY LIMITED PARTNERSHIP)**

**PURSUANT TO SECTION 17-219 OF  
THE DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT AND  
SECTION 18-214 OF  
THE DELAWARE LIMITED LIABILITY COMPANY ACT**

This Certificate of Conversion is being filed by the undersigned authorized person in the Office of the Secretary of State of the State of Delaware in accordance with the provisions of 6 Del. C. §17-219 and 6 Del. C. §18-214 to convert L. W. & J. T. MITCHELL FAMILY LIMITED PARTNERSHIP, a Delaware limited partnership, to MITCHELL FAMILY, LLC, a Delaware limited liability company, and pursuant thereto the undersigned does hereby certify that:

1. The name of the limited partnership which is to convert into a Delaware limited liability company immediately prior to the filing of this Certificate of Conversion is L. W. & J. T. MITCHELL FAMILY LIMITED PARTNERSHIP, and the jurisdiction where such limited partnership was first formed, and to which it continues to be subject immediately prior to its conversion to a Delaware limited liability company, is the State of Delaware.

2. The date on which L. W. & J. T. MITCHELL FAMILY LIMITED PARTNERSHIP was first formed as a Delaware limited partnership is March 21, 2003.

3. The name of the limited liability company as set forth in its Certificate of Formation filed contemporaneously herewith is:

MITCHELL FAMILY, LLC

4. The conversion of L. W. & J. T. MITCHELL FAMILY LIMITED PARTNERSHIP into MITCHELL FAMILY, LLC shall be effective upon the filing of this Certificate of Conversion, together with the Certificate of Formation of MITCHELL FAMILY, LLC, in the office of the Secretary of State of the State of Delaware.

*{Signature Page Follows}*

I, THE UNDERSIGNED, being duly authorized to sign on behalf of the converting Delaware limited partnership, do execute this Certificate of Conversion, hereby declaring and certifying that the facts herein stated are true, in accordance with Section 17-219 of the Delaware Revised Uniform Limited Partnership Act and Section 18-214 of the Delaware Limited Liability Company Act, on this 27th day of February, 2019.

L. W. & J. T. MITCHELL FAMILY LIMITED  
PARTNERSHIP, a Delaware limited partnership

By:   
ROBERT P. MITCHELL, Authorized Person

**CERTIFICATE OF FORMATION**  
**OF**  
**MITCHELL FAMILY, LLC**

**FIRST:** The name of the limited liability company is

**MITCHELL FAMILY, LLC**

**SECOND:** The address of its registered office in the State of Delaware is

20773 Atlanta Rd.  
Seaford, Sussex County, Delaware 19973

and the name of its registered agent at that address is

Robert P. Mitchell

I, THE UNDERSIGNED, being duly authorized to sign, have executed this Certificate of Formation, hereby declaring and certifying that the facts herein stated are true, in accordance with Section 18-204 of the Delaware Limited Liability Company Act, on this 27<sup>th</sup> day of February, 2019.

  
ROBERT P. MITCHELL, Authorized Person

**OPERATING AGREEMENT**  
**OF**  
**CAPE HENLOPEN MEDICAL CENTER, LLC**

THIS OPERATING AGREEMENT (this "Agreement") of **CAPE HENLOPEN MEDICAL CENTER, LLC**, a Delaware limited liability company (the "Company"), is made effective as of January 22, 2018, by and among **Medical Building Development, LLC**, a Delaware limited liability company, **DF Lewes Development, LLC**, a Delaware limited liability company, and **G&M Lewes, LLC**, a Delaware limited liability company, (the "Initial Members").

**ARTICLE ONE**  
**GENERAL PROVISIONS**

Section 1.1. **Formation of the Company.** By execution of this Agreement, the Initial Members hereby ratify the Certificate of Formation (the "Certificate") filed with the Delaware Division of Corporations on June 1, 2018, for the purpose of forming Cape Henlopen Medical Center, LLC, LLC as a Delaware limited liability company under the Delaware Limited Liability Company Act, 6 *Del. C.* §18-101 *et seq.* (the "Act").

Section 1.2. **Name of the Company.** The name of the Company stated in the Certificate and of the limited liability company governed by this Agreement shall be "Cape Henlopen Medical Center, LLC." The Company may also register to do business under any fictitious name as determined by the Managers.

Section 1.3. **Purpose of the Company.** The purpose of the Company shall be to own and lease all those certain parcels of real property, together with all improvements thereon, known as \_\_\_\_\_ and such additional real or personal property, tangible or intangible, as the Company may acquire from time to time.

Section 1.4. **Registered Office; Registered Agent.** The registered office of the Company in the State of Delaware is the address stated in the Certificate or any address the Managers may determine. Its principal place of business shall be such place or places as the Managers may determine.

Section 1.5. **Agreement Controls.** If any term of this Agreement conflicts with the Act, the terms of this Agreement shall control, except with respect to any matter contained in the Act that cannot be waived or modified by a limited liability company agreement.

Section 1.6. **Limited Liability of Members.** No Member shall be personally obligated to any third party for any debt, obligation or liability of the Company in excess of their Membership Interest in the Company.

## ARTICLE TWO DEFINITIONS

All terms in this Agreement shall have the meanings specified in this Article Two, whether presented with initial capital letters or otherwise. Similarly, terms defined in the text of this Agreement shall have the meanings specified in the text, whether presented with initial capital letters or otherwise.

Section 2.1. “Act” shall mean the Delaware Limited Liability Company Act, 6 *Del. C.* § 18-101 *et seq.*, as it may be amended from time to time.

Section 2.2. “Adverse Legal Proceedings” shall mean, with respect to any Member, the occurrence of any of the following events:

- (a) the Member makes an assignment for the benefit of creditors;
- (b) the Member files a voluntary petition of bankruptcy;
- (c) the Member is adjudicated bankrupt or insolvent or there is entered against the Member an order for relief in any bankruptcy or insolvency proceeding;
- (d) the Member files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
- (e) the Member seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member’s properties;
- (f) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding described in clauses (a) through (e) above;
- (g) within one hundred twenty days (120) days of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation if the proceeding has not been dismissed, or within ninety (90) days after the appointment of a trustee, receiver, or liquidator for the Member or all or any substantial part of the Member’s properties without the Member’s agreement or acquiescence, which appointment is not vacated or stayed, or if the appointment is stayed, for ninety (90) days after the expiration of the stay which period the appointment is not vacated; or
- (h) any one or more of the Member’s Interest is subject to a charging order or otherwise attached.

Section 2.3. “Agreement” shall mean this Operating Agreement, as amended from time to time.

Section 2.4. “Capital Account” shall mean an individual capital account, which must be maintained for each member. A member’s capital account will be credited with all capital contributions made by the member and with all income and gain (including any income exempt from federal income tax) allocated to the member. A member’s capital account will be charged with the amount of all distributions made to the member and with all losses and deductions (including deductions attributable to tax-exempt income) allocated to the member. Members’ capital accounts must be maintained in accordance with the federal income tax accounting principles contained in Treasury Regulations §1.704-1(b)(2)(iv).

Section 2.5. “Capital Contributions” shall mean the total amount of cash or the fair market value of property contributed under this Agreement as capital of the Company by any Member or all of the Members as well as any payments by any Member to lenders or third parties pursuant to guarantees of the Company’s obligations executed by any Member or all of the Members (or the predecessor holders of the interests of any Member or Members).

Section 2.6. “Certificate” shall mean the certificate of formation, filed with the Delaware Division of Corporations under § 18-201 of the Act.

Section 2.7. “Code” means the Internal Revenue Code of 1986, as amended.

Section 2.8. “Company” shall refer to the limited liability company governed by this Agreement.

Section 2.9. “Company Property” or “Property” shall refer to real, personal, or intangible property directly or indirectly acquired or produced by the Company, or inuring to the Company, whether owned or leased.

Section 2.10. “Interest or Membership Interest” means all the rights and other consequences of membership in the Company, including the right to distributions, profits, losses and other tax attributes, distributions of the assets of the Company upon liquidation, and voting rights.

Section 2.11. “Involuntary Withdrawal” means, with respect to any Member (hereafter, together with any successor in interest to such Member, the “Withdrawn Member”), unless the Members, by Super-Majority Vote of the Members, consent otherwise, the occurrence of any of the following events:

(a) if the Member is an individual, the Member’s death or adjudication by a court of competent jurisdiction as incompetent to manage the Member’s person or property;

(b) if the Member is a trust, the distribution by the trustee thereof of the trust’s entire Interest or at any time that all beneficiaries entitled to receive distributions of income and/or principal of such trust would not individually qualify as a permitted transferee of such trust Interest pursuant to the provisions of Section 6.1 of this Agreement;

(c) if the Member is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company, or a Change of Control of the Member;

(d) if the Member is a corporation, the dissolution of the corporation or the revocation of its charter, or a Change of Control of the Member; or

(e) if the Member is an estate, the distribution by the fiduciary thereof of the estate's entire Interest.

Section 2.12. "Majority in Interest" shall mean one or more ownership interests of Members which taken together exceed fifty percent (50%) of the aggregate of all ownership interests.

Section 2.13. "Manager" means such one or more Persons elected under this Agreement to serve as Manager.

Section 2.14. "Member" or "Members" shall mean those individuals identified in the preamble to this Agreement, as well as any Person who may later be admitted as a Member under this Agreement. The term "Member" shall not include any member of the Company that has disposed of his Units. The term "Member" shall have the meaning given to such term under the Act.

Section 2.15. "Person" shall mean a natural person, corporation, partnership, joint venture, trust, estate, unincorporated association, limited liability company, limited liability partnership, or any other juridical entity.

Section 2.16. "Super-Majority Vote" means the affirmative vote of one or more ownership interests of the Members which taken together exceed eighty-five percent (85%) of the aggregate of all ownership interests. Stated differently, Super-Majority Vote means the affirmative vote of one or more Units which taken together exceed eighty-five percent (85%) of the aggregate Units issued by the Company.

Section 2.17. "Treasury Regulations" or "Regulations" shall mean the proposed, temporary, and final regulations promulgated under the Code in effect as of the date of the filing of the Certificate and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations and may be referred to as "Treas. Reg."

Section 2.18. "Unit" or "Units" shall represent the relative ownership interests of a Member in the Company. A Member may own, hold, and vote fractional or whole Units.

### ARTICLE THREE UNITS AND CAPITAL CONTRIBUTIONS

Section 3.1. Units Owned by Members. Each Initial Member has made a Capital Contribution to the Company in exchange for Units of the Company. A schedule of each Initial Member's Units as of the effective date of this Agreement is attached as Schedule A. In exchange for each Member's Capital Contribution the Company shall issue to the Member Units and the other membership rights provided to the members under this Agreement. The Company shall update this Schedule if additional Members are admitted or existing Members are removed.

Section 3.2. Required Capital Contributions. The Manager(s) may, from time to time, by written notice, call for additional contributions to the capital of the Company to be made by all Members, in accordance with their Membership Interest. Each Member shall contribute in cash to the capital of the Company, on or before the due date specified in said written notice (which date shall not be less than ten (10) business days from the date of such written notice), his proportionate share, in accordance with his respective Membership Interest, of the aggregate additional capital contribution called for. If any Member fails to make any contribution to the capital of the Company on or before the due date specified in any such written notice from the Company, such Member shall be deemed to be a "Defaulting Member." The Defaulting Member shall be in breach of this agreement, which if uncured within thirty (30) days may, as determined by the Manager(s), have any or all of their Interest in the Company bought out under the provisions of Section 5.4 below. Likewise, in the case of any Member failing to make an additional capital contribution, the Interest of the Defaulting Member or non-paying Member shall be recalculated based on the capital contribution in question to reflect the dilution of their Interest in the Company for failure to make their additional *pro rata* capital contribution (i.e., the Members that make the additional capital contribution for the defaulting Member shall have their Interest increased by an amount which reflects the fair market value of the amount contributed and the defaulting Member shall have their Interest diluted to the same extent).

Section 3.3. Withdrawal of Capital Contributions. Except upon the dissolution and liquidation of the Company, no Member shall have the right to withdraw his Capital Contributions.

Section 3.4. Return of Capital Contribution. Except upon the dissolution and liquidation of the Company, as set forth in this Agreement, there is no agreement for, nor time set for, return of any Capital Contribution of any Member.

Section 3.5. Interest on Capital Contribution. No Member shall be entitled to interest on their Capital Contribution.

Section 3.6. Loans. Any Member or Manager may, at any time, make or cause a loan to be made to the Company in any amount and on those terms upon which the Company and such Member or Manager shall agree.

Section 3.7. Ownership of Property. All Company property, whether real or personal, tangible or intangible, shall be owned by the Company. No Member shall have any interest in the specific Company Property.

Section 3.8. No Right of Partition. Each Member irrevocably waives any right such Member may have to cause Company Assets to be partitioned or otherwise divided among the Members or any other Person, or to file a complaint or institute any proceeding at law or in equity to cause Company Assets to be partitioned or otherwise divided among the Members or any other Person.

**ARTICLE FOUR**  
**TAX PROVISIONS: ALLOCATION OF PROFITS**  
**AND LOSSES, DISTRIBUTIONS AND ELECTIONS**

Section 4.1. Allocation of Annual Profits and Losses. The Company's net profit or loss for each fiscal year will be determined according to the accounting principles employed in the preparation of the company's federal income tax information return. The profit or loss, as well as any items that must be separately stated under IRC §703(a), will be allocated to the members in proportion to their ownership interests.

Section 4.2. Allocations Solely for Tax Purposes. In accordance with Code §704(c), income, gain, loss, and deduction with respect to any property contributed to the capital of the Company must be allocated among the Members to take into account any variation between the adjusted basis of the property for federal income tax purposed in the hands of the Company and the agreed value of the property as set forth in this Agreement, or in any document entered into at the time additional property or other capital is contributed to the Company. Any elections or other decisions relating to the allocations to be made under this Section will be made by the Members. The allocations to be made under this Section are solely for income tax purposes and will not affect any Member's Capital Account, allocable share of the net profits and net losses, or right to distributions.

Section 4.3. Prorates. If a Member has been a member of the company during only part of a fiscal year, or if a Member's ownership interest changes during a fiscal year, the net profit or net loss for the year will be allocated to the member based only on the period of time during which he or she was a member or held a particular ownership interest. Net profit or loss for the fiscal year may be allocated ratably between the persons who were members on a daily basis using the company's usual accounting methods. Except as otherwise provided in Code § 706(d)(3), the company's fiscal year may, in the alternative, be divided into two or more segments, and the net profits or losses for each segment allocated among the persons who were members, or who held particular ownership interests, during the segment. Decisions about the method of prorating profit or loss will be made by the Members.

Section 4.4. Tax Distributions. To the extent that the Company's financial condition under Section 4.5 below permits, the Company shall make quarterly distributions ("tax distributions") to the Members in proportion to each Member's Ownership Interest within 60 days of the end of each calendar quarter as to enable the Members to pay federal, state and other taxes on their Units of Company income on time and in full.

Section 4.5. Additional Distributions. Additional distributions of cash or property may be made by the Company to the Members, at such times and in such amounts as the Manger(s). All distributions shall be made to the Members in proportion to each Member's Ownership Interest in the Company unless the Members agree otherwise by a unanimous vote.

Section 4.6. Expenses. If either member reasonably incurs an expense on behalf of the Company and reasonably documents this expense to the Company, the Company shall reimburse the Member for this expense as promptly as reasonably possible after receiving this documentation.

## ARTICLE FIVE ASSIGNMENT OR SALE OF INTEREST

Section 5.1. Restrictions on Transfers. No Member shall sell, transfer or otherwise dispose of any Interest except as specifically authorized in this Agreement. The Company shall not recognize any transfer not made in accordance with this Agreement. No Member shall have the right to assign or sell their Units if such assignment or sale would result, directly or indirectly, in the (a) termination of the Company for state law or federal or state tax purposes; (b) violation of the Securities Act of 1933, as amended, or any rules or regulations or any applicable state securities laws or any rules or regulations; (c) violation of any investment representation given by such Member in connection with her acquisition of Units; or (d) violation of the terms of this Agreement.

Section 5.2. Voluntary Withdrawal. No Member shall have the right or power to effect a Voluntary Withdrawal from the Company prior to the dissolution and winding up of the Company, except upon Super-Majority Vote of the Members. Any Member who effectuates a Voluntary Withdrawal in violation of this Agreement (i) shall not be permitted to receive the fair value of the Member's Interest as of the date of the Voluntary Withdrawal as otherwise provided in Section 18-604 of the Act, and (ii) shall be liable for any damages caused to the Company or its remaining Members as a result of such wrongful Voluntary Withdrawal, including, without limitation, all real estate transfer taxes and other taxes and fees resulting from the wrongful Voluntary Withdrawal, and any amounts which may be due to such Member under this Agreement shall be subject to offset for any such damages.

Section 5.3. Proposed Transfers; Mandatory Offer to Company.

(a) Mandatory Offer to Company. Any Member who intends to transfer one or more Units shall first offer their Units for sale to the Company for a 30-day option period. During this option period the transferring Member may not solicit an individual buyer for the Company Interest proposed for sale to anyone other than the Company. If the Company desires to purchase the Units it shall give the transferring Member written notice within the option period and such sale shall close at the Company's principal place of business within 90 days after the option period expires.

(b) Offer to Members. In the event that the Company does not elect to purchase all Units from the transferring member, the transferring Member shall offer their Units to the remaining Member or Members on the same terms and conditions offered to the Company. The remaining Members may purchase all of the transferring Member's Units in proportion to their respective proportionate share of Units in the Company. If the remaining Members desire to purchase the Company Interest they shall give the transferring Member written notice within the option period and such sale shall close at the Company's principal place of business within 90 days after the option period expires. If any of the remaining Members chose not to purchase the transferring Member's Units any other Member may purchase all of such Units regardless of that Member's proportionate share of Units.

(c) Sale to Third Parties. If no Member or Members elect to purchase some of all of the transferring Member's Units, the transferring Member may sell the Units to a third

party on the same terms and conditions offered to the Company and the Members. Such sale shall close at the Company's principal place of business within 90 days after the Members' option period expires. If the sale does not close within 90 days, the transferring Member must comply with the terms of 5.3(a) and (b) above before selling again.

(d) Admission of Transferee as a Member. Unless a transferee under this Section is admitted as a new Member under Section 6.1 below, such transferee shall not be entitled to become a Member or exercise any rights of Member and the transferee shall only be entitled to receive, to the extent transferred, the distributions and other rights specifically pertaining to the ownership of an Interest to which the transferor would be entitled.

#### Section 5.4. Optional Buy-Out in Event of Involuntary Withdrawal.

(a) Deemed Offer. Upon an Involuntary Withdrawal, the Withdrawn Member shall be deemed to offer for sale (the "Withdrawal Offer") to the Company all of the Membership Interest owned of record and beneficially by the Withdrawn Member (the "Withdrawal Interest") at the Purchase Price under Section 5.4(e) below, and the Withdrawn Member shall thereupon become an Interest Holder pending the resolution of the Withdrawal Offer, but shall not remain a Member.

(b) Timing for Acceptance. The Withdrawal Offer shall be and remain irrevocable for a period (the "Withdrawal Offer Period") ending at 11:59 P.M. local time at the Company's principal office on the one hundred fiftieth (150th) day following the later of the date on which the Involuntary Withdrawal occurred or the date on which the Company first had actual notice of the Involuntary Withdrawal. At any time during the Withdrawal Offer Period, the Company may accept the Withdrawal Offer by notifying the Withdrawn Member (the "Withdrawal Notice") of its acceptance. The Withdrawn Member, as an Interest Holder only, shall not be deemed a Member for the purpose of voting on whether the Company shall accept the Withdrawal Offer.

(c) Status if Offer Not Accepted. If the Company fails to accept the Withdrawal Offer, then the Withdrawn Member, upon the expiration of the Withdrawal Offer Period, thereafter shall continue as an Interest Holder but shall not be admitted as a Member unless such admission is approved by Super-Majority Vote of the Members, and shall not be entitled to receive the fair value of the Member's Interest as of the date of the Involuntary Withdrawal from the Company as otherwise provided in Section 18-604 of the Act.

(d) Pro Rata Purchase by Remaining Members. In lieu of the Company accepting the Withdrawal Offer, all of the Members, other than the Withdrawn Member, may elect to accept the Withdrawal Offer in proportion to their remaining Percentages, and on the same terms and conditions as set forth in this Section 5.4, by specifying such election and providing the Withdrawal Notice during the Withdrawal Offer Period.

(e) Purchase Price. The purchase price for transfer of the subject Units (the "Purchase Price") shall be the fair market value of the Member's ownership interest in the Company. Fair market value may be determined informally by a unanimous good-faith agreement of the Manager and the transferring Member and/or the personal representative of the

Withdrawn. In the absence of an informal agreement as to fair market value, the Company will hire an appraiser to determine fair market value. Fair market value of the Withdrawn Member's Units shall take into account the fair market value of the business, net working capital, debt and the appropriate discounts for lack of marketability, lack of control and minority interest. The appraised value shall be binding on all parties. The cost of any appraisal shall be deducted from the fair market value to which the Withdrawn Member is entitled.

(f) Payment Terms. The Purchase Price shall be paid on the Closing Date (as defined below), by the Company or the Member or Members, by delivery of a judgment note effective as of the Closing Date, in cash or an amount up to the full Purchase Price. The Judgment Note shall have a repayment term selected by the maker, but not exceeding five (5) years. The Judgment Note shall bear interest on the unpaid principal balance at a per annum rate of interest equal to the Prime Rate of Interest charged by banks in New York City as published in the Wall Street Journal and in effect on the Closing Date, plus one percent (1%) per annum.

(g) Closing Date. Closing on the purchase and sale of any Units purchased and sold under this Agreement shall be at a mutually agreeable time and place as determined by the Company. Time is of the essence in the performance of this Agreement. In no event shall closing on the purchase of any Units be held later than ninety (90) days after the latest to occur of: (a) notice of exercise of the relevant option, (b) establishment of the Purchase Price, or (c) the event giving rise to such purchase of Units.

(h) Special Purchase Offer. Notwithstanding anything in Section 5.4 above, in the event that an Involuntary Withdrawal is triggered by a Change of Control of DF Lewes Development, LLC, as long as the Company, or any successor thereof is at that time a Member of the Company, the rights of the Company with respect to the purchase of the Withdrawal Interest held by DF Lewes Development, LLC set forth above shall be held by Cape Henlopen Medical Center, LLC, or its successor in lieu of the Company itself. If Cape Henlopen Medical Center, LLC, or its successor fails to accept its right to purchase the Withdrawal Interest of DF Lewes Development, LLC under this Section prior to the expiration of the Withdrawal Offer Period applicable to such Withdrawal Offer, then upon such expiration the Withdrawal Interest of DF Lewes Development, LLC shall become subject to a Withdrawal Offer to the Company in accordance with Sections 5.4(a)-(g), except that a new Withdrawal Offer Period commencing for the Company's benefit shall be deemed to have begun on such date.

Section 5.5. Adverse Legal Proceedings. If a Member shall become subject to Adverse Legal Proceedings, such Member shall thereupon cease to be a Member and be deemed to offer for sale (the "Deemed Offer") to the Company, on the date such former Member became subject to such Adverse Legal Proceedings, all of the Membership Interest owned of record and beneficially by such former Member. The Deemed Offer shall be and remain irrevocable for a period (the "Deemed Offer Period") ending at 11:59 P.M. local time at the Company's principal office on the sixtieth (60th) day following the later of the date on which such former Member becomes subject to such Adverse Legal Proceedings or the date on which the Company first had actual notice thereof. At any time during the Deemed Offer Period, the Company may accept the Deemed Offer by notifying such former Member of its acceptance. If the Company accepts the Deemed Offer, it shall fix a closing date for the purchase that shall not be more than ninety (90) days after the expiration of the Deemed Offer Period.

(a) Adverse Purchase Price. If the Company accepts the Deemed Offer, the Company shall purchase the interest of such former Member for a cash price equal to the amount the former Member would receive if the Company was liquidated and an amount equal to the Book Value was available for distribution to the Members pursuant to Section 10.2. As used herein, the term "Book Value" means the book value of the Company computed by the certified public accounting firm regularly servicing the Company, in accordance with generally accepted accounting principles, consistently applied, as of the end of the then immediately preceding full taxable year of the Company, without regard for goodwill or any other intangible asset of the Company except to the extent that an intangible asset is reflected on the balance sheet of the Company for such immediately preceding year.

(b) If the Company fails to accept the Deemed Offer, then such former Member or such former Member's successor by virtue of the Adverse Legal Proceedings, as the case may be, thereafter shall continue solely with those rights specifically provided such Person by applicable law, but shall not be admitted as a Member unless such admission is approved by Super-Majority Vote of the Members, and shall not be entitled to receive the fair market value of such former Member's Interest as of the date such former Member ceased being a Member as otherwise provided in Section 18-604 of the Act.

## ARTICLE SIX ADDITION AND REMOVAL OF MEMBERS

Section 6.1. New Members. Individuals may be admitted as new members of the Company upon the Super-Majority Vote of the current Members. No new member shall be admitted until they agree to be bound by the terms and conditions of this Agreement. Any capital contributions required of a new member shall be determined by the Manager(s).

Section 6.2. Removal of Member. Any Member may be removed from the Company (the "Removed Member") with or without cause by a Super-Majority Vote of the non-Removed Members. Upon removal of any Member, the Company shall be required to purchase the Units of the Removed Member. The Purchase Price and Payment Terms for Units required to be purchased shall be determined in accordance with Section 5.4 above.

Section 6.3. Restrictions Apply to Subsequently-Issued Units. All Company Units hereafter issued shall be subject to this Agreement.

## ARTICLE SEVEN MANAGEMENT OF THE COMPANY

Section 7.1. General; Manager-managed Company. The Company shall be managed by one or more Managers appointed under this Section who each may, but need not, be a Member. The Manager(s) of the Company shall have the sole right and authority to manage and conduct the business and affairs of the Company and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes, powers, business and other activities of the Company. The Manager(s) may appoint, employ or otherwise contract with any persons or entities for the transaction of the business of the Company or the performance of services for or on behalf of the Company, and the Manager may delegate to any such person

(who may be designated an officer of the Company) or entity such authority to act on behalf of the Company as the Manager may from time to time deem appropriate. No Member, by reason of its status as such, shall have any authority to act for or bind the Company or otherwise take part in the management of the business or affairs of the Company; provided that the Members shall have the right to vote on or approve the actions specified herein or in the Delaware Act (or hereafter specified by the Manager) to be voted on or consented to by the Members. The Manager(s) may, without limiting their responsibilities to perform the business operations of the Company, exercise the following powers:

(a) expend Company funds in connection with the operation of the business of the Company or otherwise pursuant to this Agreement;

(b) employ and dismiss from employment any and all officers, employees, agents, independent contractors, attorneys and accountants;

(c) prosecute, settle or compromise all claims against third parties, defend, compromise, settle or accept judgment on claims against the Company and execute all documents and make all representations, admissions and waivers in connection therewith;

(d) borrow money not exceeding \$50,000 on behalf of the Company from any person, issue promissory notes, drafts and other negotiable and non-negotiable instruments and evidences of indebtedness, secure payment of any such indebtedness by mortgage, pledge or assignment of property of the Company, whether at the time owned or thereafter acquired, or guarantee the obligations of others;

(e) hold, receive, mortgage, pledge, lease, transfer, exchange, otherwise dispose of, grant options with respect to, and otherwise deal in and exercise all rights, powers, privileges and other incidents of ownership or possession with respect to all property of whatever nature held or owned by, or licensed to, the Company;

(f) lend any of the Company property with or without security;

(g) have and maintain one or more offices at such place or places as is determined by the Manager;

(h) open, maintain and close bank accounts, money market accounts or investment, custody or other financial accounts and draw checks and other orders for the payment of monies;

(i) engage accountants, custodians, consultants and attorneys and any and all other agents and assistants (professional and nonprofessional) and pay such compensation in connection with such engagements that the Manager determines is appropriate;

(j) maintain such insurance relating to the business of the Company, upon such terms, as the Manager determines is appropriate; and

(k) enter into, execute, make, amend, supplement, acknowledge, deliver and cause the Company to perform any and all contracts, agreements, licenses and other instruments,

undertakings and understandings that the Manager determines is necessary, appropriate or incidental to carrying on the business and affairs of the Company.

Section 7.2. Powers of Members. No Member is an agent of the Company solely by virtue of being a Member, and no Member has authority to act for or to bind the Company solely by virtue of being a Member. No Member or other person shall have the right, privilege or power to bind the Company or perform any act on behalf of the Company, including, without limitation, borrowing money or otherwise incurring indebtedness or liability or executing or delivering any notes, other evidences of indebtedness, contracts, agreements, assignments, leases, loan agreements, mortgages and other security instruments and deeds and all other documents and instruments. The Manager(s) may authorize himself or herself or any Member(s), officer(s), agent(s) or employee(s) to enter into any contract, to execute any instrument or certificate (including any certificate to be filed on behalf of the Company with the Secretary of State of the State of Delaware under the Delaware Act) or to take any other action in the name of and on behalf of the Company, and this authority may be general or confined to specific instances. But unless so authorized or ratified by the Manager(s) or within the agency power of an officer, no Member, officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount. The taking of any lawful action by the Manager(s) on behalf of the Company within the power and authority of the Manager(s) under this Agreement, including the execution and/or delivery of any instrument, certificate, filing or document by the Manager(s) on behalf of the Company, or the adoption by the Manager(s) of authorizing resolutions with respect to any matter, shall constitute and evidence the due authorization of such action or matter on behalf of the Company.

Section 7.3. Initial Managers. David Blauer and Megan Glick shall be the initial Managers of the Company. Upon the death, disability, or resignation of an initial Manager, the remaining Members may elect a new Manager or Managers to fill the vacancy by a Majority Vote. Any individual Manager may execute any Deed, agreement, contract, indenture or other document on behalf of the Company. The Managers may enter into contracts on behalf of the Company with Members or Affiliates of the Members that the Managers determine to be reasonable and appropriate. If there are an equal number of Managers and they are deadlocked on an issue the deadlock shall be broken by a Majority Vote of the Members.

Section 7.4. Limitations on Authority of the Managers. The authority of the Managers over the conduct of the affairs of the Company shall be subject only to such limitations as are expressly stated in this Agreement. The Managers shall not:

(a) without a Super-Majority Vote of the Members, (i) acquire by purchase, lease, or otherwise, any real or personal property, tangible or intangible; (ii) construct, operate, maintain, finance or improve, or own, sell, convey, assign, mortgage, or lease any of the Company Assets; (iii) prepay, in whole or in part, refinance, amend, modify, or extend any mortgages or deeds of trust which may affect any Company Asset or, in connection therewith, execute for and on behalf of the Company any extensions, renewals, or modifications of such mortgages or deeds of trust; (iv) make an election for the Company pursuant to any option or other opportunity provided for in this Agreement to purchase any Interest or Membership Right; (v) undertake any Capital Transaction; (vi) borrow money in excess of \$50,000, for and on

behalf of the Company; (vii) lend, assume, or guaranty debt in excess of \$50,000 in any one fiscal year; (viii) approve or effect the merger or consolidation of the Company with or into another entity or the sale, lease, or exchange of all or substantially all of the Company Assets; or (ix) admit an additional or substitute Member to the Company, except as otherwise provided in Section 6.1;

(b) without the unanimous consent of all of the Members, (i) allow or cause the Company to engage in business in any jurisdiction that does not provide for the registration of limited liability companies; or (ii) approve or effect the issuance of Interests or Membership Rights or any option or warrant allowing for the issuance of Interests or Membership Rights to any Member or other Person; or

(c) undertake any other activity which, by the terms of this Agreement, is specifically reserved in or granted to the Members.

Section 7.5. Manager Compensation. The Manager(s) of the Company may be paid compensation for their services as determined by a Super-Majority Vote of the Members.

## ARTICLE EIGHT BOOKS AND RECORDS; FINANCIAL STATEMENTS

Section 8.1. Books and Records. At all times during the continuance of the Company, the Company shall maintain, at its principal place of business, separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the Company business in accordance with generally accepted accounting principles consistently applied, and, to the extent inconsistent therewith, in accordance with this Agreement. Such books of account, together with a copy of this Agreement and of the Certificate, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by each Member and its duly authorized representative for any purpose reasonably related to such Member's interest in the Company.

Section 8.2. Financial Statements. The Managers shall prepare and maintain, or cause to be prepared and maintained, the books of account of the Company. The Managers shall prepare and file, or cause to be prepared and filed, all applicable federal and state tax returns. The financial statements of the Company may be audited by an independent certified public accountant, selected by the Members, with such audit to be accompanied by a report of such accountant containing its opinion. The cost of such audits will be an expense of the requesting Member. A copy of any such audited financial statements and accountant's report will be made available for inspection by all Members.

Section 8.3. Accounting Method. For both financial and tax reporting purposes and for purposes of determining Profits and Losses, the books and records of the Company shall be kept on the cash method of accounting applied in a consistent manner and shall reflect all Company transactions and be appropriate and adequate for the Company's business.

## ARTICLE NINE MISCELLANEOUS

Section 9.1. Amendment. Any amendment or supplement to this Agreement shall only be effective if in writing and approved by a Majority Vote of the Members.

Section 9.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Section 9.3. Entire Agreement. This Agreement together with its Schedules constitutes the entire agreement of the parties. This Agreement cannot be changed, modified, or discharged orally but only by an agreement in writing. There are no representations, warranties, or agreements other than those set forth in this Agreement.

Section 9.4. Successors and Assigns. Subject to the limitations on transferability, this Agreement shall be binding upon, and shall inure to the benefit of, the heirs, administrators, personal representatives, successors, and assigns of the respective parties.

Section 9.5. Creditors. None of the provisions of this Agreement shall be construed for the benefit of or enforceable by any of the creditors of the Company or the creditors of any Member.

Section 9.6. Notices. Any written notice, offer, demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been given if personally delivered or mailed by certified mail, return receipt requested, or sent by overnight delivery, telex, telegram, or facsimile transmission to the Member's address as set forth on in this Agreement.

Section 9.7. Arbitration. If the Members fail to agree on any matter involving the operation and maintenance of the Company, the Members shall jointly appoint a mutually acceptable neutral third party who shall attempt to resolve the dispute with the parties. The fees of the neutral third party shall be paid by the Company. If with the guidance of such third party the dispute is not resolved or if the Members agree not to utilize a neutral third party to mediate the disputes, any Member may elect to submit the matter to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and 10 *Del. C.* § 5701 *et seq.* The Members shall mutually agree on an arbitrator, or if they cannot do so, the neutral third party shall select an arbitrator. The cost of the binding arbitration shall be borne by the Member who is least successful in the arbitration. Any cost to enforce the decision of the arbitrator shall be borne by the Member against whom the enforcement action was required.

Section 9.8. Tax Matters Partner. The Managers shall appoint the Company's tax matters partner ("Tax Matters Partner"). The Tax Matters Partner shall have all powers and responsibilities provided in Code Section 6221, *et seq.* The Tax Matters Partner shall keep all Members informed of all notices from government taxing authorities which may come to the attention of the Tax Matters Partner and which may adversely affect the Members. The Company shall pay and be responsible for all reasonable third party costs and expenses incurred by the Tax Matters Partner in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax related administrative or judicial proceeding

against any Member, even though it relates to the Company. The Tax Matters Partner may compromise any dispute with the Internal Revenue Service without the prior approval of the Members.

Section 9.9. Indemnity.

(a) General. To the extent not inconsistent with the Act and other applicable law, the Company, its receiver, or its trustee shall indemnify each Manager and their employees, agents, affiliates, heirs, executors, administrators, successors, and assigns against and save them harmless from any claim, demand, judgment, or liability and against and from any loss, cost, or expense (including, without limitation, attorneys' fees and court costs that may be paid by the Company as incurred), that may be made or imposed upon such persons by reason of any (1) act performed for or on behalf of the Company or in furtherance of the Company's business, (2) inaction on the part of such persons, or (3) liabilities arising under federal and state securities laws, to the extent permitted by law, so long as the Member has acted in furtherance of a good faith belief that such course of conduct was in the best interest of the Company and said conduct did not constitute gross negligence, gross misconduct, fraud, a breach of fiduciary duty, or a breach of this Agreement. To the extent that this subsection is inconsistent with the Act, the Act shall control. Nevertheless, it is the intent of this subsection that the aforementioned parties be indemnified by the Company to the maximum extent permitted by Law.

(b) Liability for Acts or Omissions. To the extent not inconsistent with applicable law, no Manager or their respective employees, agents, representatives, affiliates, heirs, executors, administrators, successors, or assigns, shall be liable, responsible, or accountable in damages or otherwise to the Company or any Member for any action taken or failure to act on behalf of the Company within the scope of the authority conferred upon the Manager by this Agreement or by law, so long as the Manager has acted in furtherance of a good faith belief that such course of conduct was in the best interest of the Company and said conduct did not constitute gross negligence, gross misconduct, fraud, a breach of fiduciary duty, or a breach of this Agreement.

Section 9.10. Counterparts. This Agreement may be executed in counterparts by the Members and all such counterparts once so executed shall together be deemed to constitute the final Agreement, as if one document has been signed by all parties; and each counterpart, upon execution and delivery, shall be deemed a complete original, binding on the Members.

## ARTICLE TEN DISSOLUTION

Section 10.1. Dissolution. The Company shall be dissolved, and shall terminate and wind up its affairs, upon the first to occur of the following:

- (a) the unanimous decision of all of the Members to dissolve the Company;
- (b) the sale of the real property identified in Section 1.4 above; or
- (c) an event specified in Section 18-801 of the Act.

Section 10.2. Liquidation. In the event of dissolution as provided in Section 10.1 above, the assets of the Company shall be paid and distributed in the following order:

(a) All of the Company's debts and liabilities to persons other than a Member, but excluding secured creditors whose obligations will be assumed or otherwise transferred upon the liquidation of Company assets, shall be paid and discharged and any reserve deemed necessary by the Members for the payment of such debts shall be set aside;

(b) All of the Company's debts and liabilities to any Member shall then be paid and discharged; and

(c) The balance of the assets of the Company shall then be distributed to the Members in proportion to their respective holdings of Units.

(d) Upon dissolution, each Member shall look solely to the assets of the Company for the return of her cash contribution and shall be entitled only to a cash distribution out of the assets of the Company, whether owned outright or leased, (the "Company Property") in return thereof, unless otherwise determined by the Members. If the Company Property remaining after the payment or discharge of priority debts and liabilities of the Company is insufficient to return the cash contribution of each Member, Members shall have no recourse against the other Members.

Section 10.3. Distribution in Kind. If the Members or any other Person or Persons acting as liquidator determines that a portion of the Company Property should be distributed in kind to the Members, an independent appraisal of the fair market value of such portion of the Company Property as of a date reasonably close to the date of liquidation shall be obtained. Distribution of any such Company Property in kind to a Member shall be considered a distribution of an amount equal to the fair market value of such Company Property.

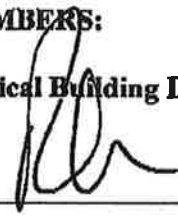
Section 10.4. Termination. Immediately upon the completion of the distribution of Company Property as provided in Section 10.2 and/or Section 10.3, a certificate of cancellation shall be filed in the office of the Secretary of State of the State of Delaware and the Company shall terminate.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement as of the date first above-written.

**MEMBERS:**

**Medical Building Development, LLC**



(SEAL)

By:

Title:

**DF Lewes Development, LLC**

(SEAL)

By:

Title:

**G&M Lewes, LLC**

(SEAL)

By:

Title:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first above-written.

**MEMBERS:**

**Medical Building Development, LLC**


Witness

  
Witness

By: \_\_\_\_\_ (SEAL)

Title:

**DE Lewes Development, LLC**

  
By: \_\_\_\_\_ (SEAL)

Title: *MANAGING MEMBER*

**G&M Lewes, LLC**

  
Witness

  
By: \_\_\_\_\_ (SEAL)

Title: *Managing Member*

**SCHEDULE A**  
**OWNERSHIP INTERESTS OF MEMBERS**

<u>Member Name</u>	<u>Membership Units</u>	<u>Ownership Interest</u>	<u>Capital Contribution</u>	<u>Manager</u>
Medical Building Development. LLC	8,335	83.35%		
DF Lewes Development, LLC	865	8.65%		
G&M Lewes, LLC	800	8.0%		
<b>Total</b>	<b>10,000</b>	<b>100%</b>	<b>\$225,000</b>	<b>2 managers</b>